88-622

No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,
Petitioner,

v.

BLOUNT INTERNATIONAL, LTD.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT STATE OF FLORIDA

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QUESTION PRESENTED

Do federal preemption principles control the exercise of jurisdiction by a Florida state court in an action for damages arising out of tortious conduct where liability is premised on an international union's constitution which is an agreement as defined under federal labor law, 29 U.S.C. § 185?

LIST OF PARTIES

The parties to the proceedings below are:

1. Blount International, Ltd.

2. International Association of Bridge, Structural and Ornamental Ironworkers.

3. Local 397, International Association of Bridge, Structural and Ornamental Ironworkers. (Local 397 has settled with Blount and is not a party in this Court nor was it a party to the appeal described in the petition.) A number of local union officials were named as defendants and were settled out in the trial court before these proceedings were commenced.

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No. ———

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,
Petitioner,

v.

BLOUNT INTERNATIONAL, LTD.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL, SECOND DISTRICT STATE OF FLORIDA

International Association of Bridge, Structural and Ornamental Ironworkers, AFL-CIO, respectfully prays that a writ of certiorari issue to review the decision of the District Court of Appeal, Second District of the State of Florida entered in this proceeding on November 13, 1987.

OPINIONS BELOW

The judgment of the Circuit Court of Polk County, Florida, holding the International liable is unreported and is printed as Appendix A. The Court's findings of fact and conclusions of law are printed as Appendix B. The opinion of the District Court of Appeal, Second District, State of Florida is reported at 519 So. 2nd 1009 and is reprinted as Appendix C. The order of the Dis-

trict Court of Appeal, Second District, State of Florida denying the motion for rehearing and motion for rehearing en banc is reprinted as Appendix D. The order of the Florida Supreme Court denying a hearing was entered on July 19, 1988 and is reprinted as Appendix E.

JURISDICTION

The opinion of the District Court of Appeal for the State of Florida was entered on November 13, 1987. A timely motion for rehearing and motion for rehearing en banc was denied on February 8, 1988. Thereafter, Petitioner filed a timely motion for hearing in the Florida Supreme Court which was denied on July 19, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). This petition is timely filed with this Court under 28 U.S.C. § 2101(c).

STATUTE INVOLVED

The relevant Federal labor statute is 29 U.S.C. § 185 which in pertinent part provides:

> Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

STATEMENT OF THE CASE

1. Almost ten years ago in 1979 a mass demonstration occurred at the Lakeland, Florida, power plant being built by Blount International, Ltd. After the litigation languished for six years, the International was served and filed its answer to an amended complaint in August of 1985. Blount sought damages arising out of the mass demonstration primarily for increased security costs which it incurred in the several months following the one

demonstration. Prior to trial the parties stipulated to bifurcate the issues of liability and damages. The Local Union which had conducted the mass demonstration and various of its officers entered into a "consent judgment" which was approved by the trial court in May of 1986 and, as a result, the Local Union admitted responsibility for the mass demonstration and agreed to a monetary settlement.

The two remaining parties, Blount International and the International Union, submitted the matter to the trial court based on certain pleadings and evidence including affidavits, depositions, other documentary evidence and primarily the International Constitution. After briefing, the trial court issued a letter of decision holding that the International was liable for the conduct of the Local Union and directing Blount to prepare findings of fact and conclusions of law. The findings of fact and conclusions of law (Appendix B) were signed on January 12, 1987 and simultaneously a judgment (Appendix A) was entered.

Thereafter the International Union appealed to the District Court of Appeal for the State of Florida. That Court entered its opinion upholding the trial court's judgment and rejecting the application of any preemption doctrines. The International Union had urged that the Florida courts respect the doctrine of preemption insofar as the courts relied upon the International Constitution to impose liability on the International Union for the conduct of the Local Union. The Florida court rejected this argument on the ground that because this was solely a matter of State concern, Federal law was inapplicable even to the interpretation of the International Constitution.

2. This case comes to this Court with no relevant factual dispute. For purposes of this petition we accept the proposition that there was a mass demonstration for which

the Local Union has now conceded liability. The International Union was not consulted by the Local Union with respect to the Lakeland project; the International Union did not participate with the Local Union with respect to the Lakeland project; no strike sanction was granted by the International Union with respect to the Lakeland project; and the International Union was never requested to provide nor did it ever provide any assistance to the Local Union with respect to the Lakeland project dispute. The International Union's agent in the area, an organizer, only became aware of the demonstration sometime afterward. In summary, the International Union had absolutely no part in the demonstration or the events which occurred subsequent to it.

Liability was affirmed by the District Court of Appeal on the ground that the International Constitution, as read by that court, gave the International theoretical and actual control of the day to day affairs of the Local Union. The trial court and the appellate court relied exclusively upon their reading of some eighteen separate provisions of the Constitution. (Appendix, pp. 31a-32a.) In reciting these constitutional provisions, the appellate court recognized that there was no factual record other than the Constitution to support a finding of liability.[1] What is remarkable, however, is that there is nothing in the Constitution which says the International controls any picketing of non-union employers by local unions.[2] Thus, the

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[1] The trial court had noted the local union business agent was "promoted" two years after the mass demonstration to an international position, that international business was discussed at local union meetings, and that the local and international had a goal of forcing union labor to be utilized. The appellate court recited *only* the 18 constitutional provisions in its decision and these "facts" only emphasize that the International union played no part in the Lakeland Power Plant dispute.

[2] For example, the court relied upon the fact that the International Constitution establishes qualifications for local union office. (Appendix, p. 31a.) In relying upon the asserted power to control

Florida courts relied solely upon the constitutional provisions in light of Florida law of agency.

3. As we shall show, Federal labor law has consistently interpreted such constitutions as to insulate international unions from liability for the conduct of local unions. Thus, the decision of the Florida court contravenes Federal labor law in the context of an action brought on a theory of State law liability.

REASONS FOR GRANTING THE WRIT

1. If there is one constant principle in this Court, it is to prohibit State regulation of labor matters where there is any Federal interest involved. Where disputes implicate agreements encompassed within § 185, suits based upon State law are entirely preempted. See *International Brotherhood of Electrical Workers v. Hechler*, 481 U.S. —— (1987) and *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 22 (1985). Where only state law is implicated, and there is no need to resort to any collective bargaining agreement, state law theories are not preempted. See *Lingle v. Norge Division*, 486 U.S. ——, 100 L.Ed.2d 910 (1988). Finally, state law actions may proceed even in the absence of the implication of any interpretation of a collective bargaining agreement provided relevant Federal labor law principles are respected. See *Old Dominion Branch No. 496, Letter Carrier v. Austin*, 418 U.S. 264 (1974) and *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966). As we shall show, this case implicates two kinds of preemption; namely, pre-

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the locals the court ignored the provisions of Landrum-Griffin which restrict the International's right to control locals which are contained in the trusteeship portion of Landrum-Griffin, 29 U.S.C. § 461-464. This illustrates the treacherous ground a state court enters upon when interpreting an international constitution without respecting what has now become an established body of Federal law regarding such documents.

emption under § 185 as well as preemption of a state claim which implicates important principles of Federal labor law concern.

2. The issue, and only issue in this case, is how the state courts treated the International Constitution. The trial and appellate courts' interpretation of the International Constitution is *contrary* to that of the Federal courts which have interpreted such constitutions. See *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212 (1979); *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980); and *Hamilton v. International Bridge, Structural and Iron Workers Union*, 122 LRRM 3309 (W.D. Ky. 1986).[3] We read the decision of the court below as conceding that Federal law would not impose a finding of liability based upon the International Constitution. Thus, the court below rejected the relevance of any decisions of the Federal courts interpreting any Federal law and (App., pp. 26a-27a) applied solely what it thought to be relevant Florida law. For example, the trial court expressly rejected the *Carbon Fuel* standard of agency (App., p. 26a) and the appellate court held the trial court properly found "under Florida law an agency relationship had been shown to exist." (App., p. 25a).

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[3] We are unable to local *any* Federal case, since *Carbon Fuel Co. v. United Mine Workers, supra*, which has interpreted or applied an international constitution under Federal labor law principles as the Florida courts did in this case. See also, *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 395-96 (1922) opinion after remand, 268 U.S. 195 (1925); *NLRB v. International Longshoremen's and Warehousemen's Union Local 10*, 283 F.2d 558 (9th Cir. 1960); *Fabian v. Freight Drivers Local 557*, 448 F.Supp. 835 (D. Md. 1978); *Walters v. Roadway Express, Inc.*, 400 F.Supp. 6, 15-16 (S.D. Mo. 1975); *Abreen Corp. v. Laborers International*, 709 F.2d 748, 757 (1st Cir. 1983) *Kerry v. Mine Workers*, 637 F.2d 957, 963-64 (3rd Cir. 1981), *cert. den.* 454 U.S. 823 (1981); *C&K Coal v. United Mine Workers*, 704 F.2d 690, 698-99 (3rd Cir. 1983); and *Borowiec v. Local No. 1570, Boilermakers*, 626 F.Supp. 296, 304 (D. Mass. 1986).

There are two independent sources of federal preemption principles which forbid such a result. We shall show how they intersect and require the granting of this petition in order to insure the consistency of federal law.

3. Where the relationship between an international union and a local union is governed by a constitution, that constitution is a contract. Its interpretation is governed by federal law because it is a contract within the meaning of 29 U.S.C. § 185. This Court has explicitly ruled that a constitution between an international union and a local union is a contract within the meaning of 29 U.S.C. §185 and therefore governed under the principles of federal law. See *United Association of Journeymen and Apprentices v. Local 334, United Association*, 452 U.S. 615 (1981). This Court stated the governing principle:

> "It is enough to observe that the substantive law to apply 'is federal law, which the courts must fashion from the policy of our national labor laws.'" *Id.* at 627.

Section 185 is not the only source of federal law with respect to the interpretation of international constitutions. The Landrum-Griffin Act has much to say about the relationship between local unions and international unions, and, in particular, limits the control which internationals may exercise over local unions. See 29 U.S.C. § 461-64 and *International Union, Allied Industrial Workers v. Local No. 589*, 693 F.2d 666 (7th Cir. 1982). The National Labor Relations Act is also a source of federal regulation of the relationship between international unions and local unions. See, e.g., *NLRB v. Local Union No. 46, Metallic Lathers*, 727 F.2d 234 (2nd Cir. 1984). The Norris-LaGuardia Act, 29 U.S.C. § 101, *et seq.* also concerns this relationship. See *Federal Prescription Service v. Amalgamated Meat Cutters*, 527 F.2d 269 (8th Cir. 1976). In the duty of fair representation context internationals are not generally liable for the conduct of

local unions. See *Hammonds v. Adams*, 783 F.2d 597, 604 (5th Cir. 1986) and *Fristoe v. Reynolds Metals*, 615 F.2d 1209, 1215 (9th Cir. 1980). Under Title VII, 42 U.S.C. § 2000(e) international unions are not liable based upon the constitutional relationship. See *Sinyard v. Foote & Davies Division*, 577 F.2d 943 (5th Cir. 1978) and *Berger v. International Association of Bridge, Structural Ironworkers*, 843 F.2d 1395, 1427-28 (D.C. Cir. 1988).[4] This recitation demonstrates that federal law extensively and pervasively regulates and defines the relationship between international and local unions.

We turn, however, to the fundamental proposition with which we began our discussion in this section. 29 U.S.C. § 185 defines an international constitution to be a contract and where interpretation of such a contract is implicated, state courts are generally deprived of any power. The only variation in this case is an international constitution, not a collective bargaining agreement. Quite clearly this case required Florida courts to engage in extensive interpretation of the international's constitution.

What presents itself to this Court for resolution is not an assertion that preemption under § 185 forecloses the state court from adjudicating the tort claim against the International. Rather, it forecloses the state court from processing the claim so as to interpret the constitution without due regard for federal labor law doctrines. And, as we have shown above, relevant authority teaches that the Florida court did exactly this. We now turn to show that based upon a separate but intersecting line of preemption cases, a state court has jurisdiction to entertain a state tort claim but only may do so consistent with identified federal labor interests.

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[4] The International Union intends to file a Petition for Writ of Certiorari in this matter. In *Berger* the Court of Appeals applied the *Carbon Fuel* standard but did so in an erroneous manner.

4. There are several cases in which this Court has determined that state claims may proceed so long as the federal interest is protected by establishing federal doctrines which govern the processing of the state law claim. The clearest example of such analysis is *Old Dominion Branch No. 496, Letter Carriers v. Austin, supra.* In that case Austin sued a union claiming that leaflets describing him as a "scab" were defamatory. The Court emphasized that its prior decision in *Linn v. Plant Guard Workers, supra* had to be read "to permit application of state libel laws in such circumstances as long as the statements were made with 'actual malice.'" 418 U.S. at 269. This Court summarized as follows:

> "Accordingly, we held that libel actions under state law were pre-empted by the federal labor laws to the extent that the State sought to make actionable defamatory statements in labor disputes which were published without knowledge of their falsity or reckless disregard for the truth." *Id.* at 272-73.

Thus *Old Dominion Branch* and *Linn* stand for the proposition that common law actions for libel in labor disputes may precede so long as the federal interest is protected by requiring that a heightened standard of defamatory conduct control. This Court saw that rule as an "accommodation of conflicting federal and state interests. . ." *Id.* at 273. It is worth noting also that *Linn v. Plant Guard Workers* teaches that the state trial judge must also make sure that damages are not excessive where unions are involved. *Id.* at 65-66. See also *International Brotherhood of Electrical Workers v. Foust,* 442 U.S. 42 (1979) (holding that punitive damages may not be awarded as a matter of federal law in duty of fair representation actions.)

The court below relied upon *Farmer v. Carpenters,* 430 U.S. 290 (1977). We submit that a fair reading of that case supports Petitioner. In that case the plaintiff Hill (Farmer was substituted in after Hill's death) al-

leged that he had suffered outrageous conduct by the union officials in the course of utilizing the union's hiring hall. This Court held that a claim for outrageous conduct or intentional infliction of emotional distress could proceed in the state court system. This Court, however, recognized that there was a certain tension between federal law regulation of the hiring hall and state court interest in regulating outrageous conduct. This Court said:

> "Viewed, however, in light of the discreet concerns of the federal scheme and the state tort law, that potential for interference is insufficient to counter balance the legitimate and substantial interests of the state in protecting its citizens.
>
> * * * *
>
> Whether the statements or conduct of the respondents also cause Hill severe emotional distress and physical injury would play no role in the Board's [Labor Board] disposition of the case, and the Board could not award Hill damages for pain, suffering, or medical expenses. Conversely, the state court tort action can be adjudicated without resolution of the 'merits' of the underlying labor dispute.
>
> * * * *
>
> The state court need not consider, much less resolve, whether a union discriminated or threatened to discriminate against an employee in terms of employment opportunities. To the contrary, the tort action can be resolved without reference to any accommodation of a special interest of unions and members in the hiring hall conduct." *Id.* at 304-305.

The import of this reasoning is that where a state court must *resolve* a matter of interpretation of the union constitution, then the federal interest is directly implicated. And once that happens the state court may not proceed without accommodation of the relevant federal interest. In *Farmer* this Court went on to state:

> "On balance, we cannot conclude that Congress intended to oust state court jurisdiction over actions over tortious activity such as that alleged in this case. At the same time, we reiterate that concurrent state court jurisdiction cannot be permitted where there is a realistic threat of interference with a federal regulatory scheme." *Id.* at 405.

In summary the reasoning of the *Farmer* Court is that state law concepts may proceed so long as the federal interest is accommodated. Here, the accommodation mandated that federal law with respect to the liability of international unions for the conduct of local unions be fully respected. Otherwise international unions will be subject to conflicting obligations under various state laws as well as conflicting obligations between state and federal law. The uniformity of the interpretation and enforcement of the international constitution which governs locals throughout the entire United States must give way to any inconsistent state law interest.

This Court considered these issues in a case decided this last term. In *Lingle v. Norge Division, supra,* this Court held that a state law claim which is independent of a collective bargaining agreement is not preempted. This Court stated that ". . . § 301 preemption merely ensures that federal law will be the basis for interpreting collective-bargaining agreements, and says nothing about the substantive rights the State may provide to workers when adjudication of those rights does not depend upon the interpretation of such agreements." 100 L.Ed.2d at 420-421, (footnote omitted.) We only need substitute the words "International Constitution" for "collective bargaining agreements" and we see precisely the issue presented to this Court. Here, the entire finding of liability "depend[s] upon the interpretation of such agreement[ ]." *Id.*

5. As we have shown, there are two intersecting and overlapping preemption doctrines which are applicable:

first, the requirement that the § 185 agreement, the International Constitution, be interpreted uniformly and consistent with Federal labor law; and second, state law claims may proceed so long as the federal interest is accommodated, namely, continuing the separation between the international and the local unions consistent with federal labor doctrines. The Florida court has rejected this by determining that because it is a state law claim arising out of mass picketing there is no federal interest to be respected, even in interpreting the International Constitution.[5]

We urge this Court to grant the petition for a writ of certiorari because the decision below so clearly conflicts with the current doctrine concerning the liability of international unions for the conduct of local unions. This case, moreover, goes to an even more important principle; namely, the requirement that state courts show proper deference to and appropriately apply the precepts of federal labor law so as to respect the national uniformity envisioned by the preemption principle.

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[5] The problem in this case arises from an old decision in which the Florida courts held another international union liable for the conduct of one of its locals. See *International Union of Operating Engineers, Local 675 v. Lassitter*, 295 So.2d 634 (Fla. 4th DCA 1974), *quashed on other grounds*, 314 So.2d 761 (Fla. 1975), *rev'd. and remanded on other grounds*, 325 So.2d 408 (Fla. 4th DCA 1975), *quashed and judgment entered by trial court reinstated*, 349 So.2d 622 (Fla. 1976). In a more recent case it appears as though one Florida court has limited that doctrine. See *Folwell v. Bernard*, 477 So.2d 1060 (Fla. 2d DCA 1985). See also *York Division Borg-Warner v. United Association of Journeymen*, 473 F.Supp. 896, 900-901 (S.D. Fla. 1979) (district court correctly applying doctrine and finding International not liable). This Florida doctrine of agency would impose liability on an international union for common torts such as "slip and falls" and automobile accidents.

CONCLUSION

For the reasons suggested above, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDICES

APPENDIX A

STATE OF FLORIDA
CIRCUIT COURT OF POLK COUNTY
TENTH JUDICIAL DISTRICT

Civil Action File No. GC-G-79-3322

BLOUNT INTERNATIONAL, LTD.,
Plaintiff,

v.

THE INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO, *et al.*,
Defendants.

JUDGMENT

This matter having come before the Court pursuant to the stipulation between the parties, the Court concludes that the International is liable for the tortious acts of Local 397 and its members against Blount International, Ltd. Damages will be determined by the Court following a hearing.

Done this 12th day of January, 1987.

/s/ J. Randolph Bentley (ARK)
THE HONORABLE J. RANDOLPH BENTLEY

APPENDIX B

STATE OF FLORIDA
CIRCUIT COURT OF POLK COUNTY
TENTH JUDICIAL DISTRICT

Civil Action File No. GC-G-79-3322

BLOUNT INTERNATIONAL, LTD.,
Plaintiff,

v.

THE INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO, *et al.*,
Defendants.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 17, 1986, the Court issued its decision in this matter and held Defendant International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO (hereafter "International" or "Defendant"), liable to Blount International, Ltd. ("Blount") for the tortious acts of its Local 397 which occurred in late 1979 and early 1980 in Lakeland and Polk County, Florida. These Findings of Fact and Conclusions of Law set forth the basis of my Judgment.

I. INTRODUCTION

This action was instituted by Plaintiff on October 27, 1979. In its Complaint, Plaintiff alleges a series of tortious and wrongful acts by numerous Defendants, including the International and its Local 397, arising out of a labor dispute at a construction site in Lakeland, Florida.

Plaintiff specifically alleged that Defendants' actions constituted tortious and wrongful interference with business relationships that Plaintiff enjoyed with the City of Lakeland, Florida and certain of Plaintiff's subcontractors.

Prior to trial, Plaintiff settled its dispute with Defendant Local 397 and individual defendants, Charles M. ("Tony") Pinion, Stephen Dixon, Michael Joseph McLoone, Larry Dean Lanier and Billy Ray Conner ("Individual Defendants"), pursuant to the Consent Judgment submitted to the Court on or about June 10, 1986. In that Consent Judgment, those Defendants admitted as follows:

> The conduct of the Individual Defendants and of the agents, representatives and members of Local 397 on October 26, 1979, was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the State of Florida. Furthermore, the Defendants party to this Consent Judgment *admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct* which occurred during the latter part of October, 1979, at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

Consent Judgment at Paragraph 3 (Emphasis added). As a result of the above-referenced Consent Judgment, the only remaining Defendant in this litigation is the International.

Plaintiff contends that since Defendant Local 397 and the Individual Defendants have admitted liability for the actions occurring at or about the construction site in the fall of 1979, the only remaining issue before the Court concerns Defendant International's liability for

such actions. Plaintiff has argued that Defendant International is vicariously liable, under the doctrine of *respondeat superior*, for the actions of Defendant Local 397 and the Individual Defendants, because of the International's pervasive and actual control over the day-to-day activities of its Local 397. Plaintiff contends this finding of control is supported by the International's Constitution and Local 397's By-Laws, deposition testimony of Local and International officials and other supporting pleadings and documentary evidence. Finally, Plaintiff contends that whether the International is liable for Local 397's actions is to be determined by Florida law and not federal law.

In contrast, the International argues that it is a distinct and separate entity from Local 397 for purposes of liability, and that the relationship created by the evidence before the Court is insufficient to pierce the veil of separation between the two entities. Defendant also contends that federal law controls the issue of the International's liability, and that under controlling federal precedent, the International is not liable for the acts of the Local.

Pursuant to a Stipulation entered into between Plaintiff and Defendant International and filed with the Court on or about May 22, 1986 the parties agreed as follows regarding the agency issue:

(1) The liability issue will be tried by the Court without a jury; and

(2) The issue of liability will be bifurcated from the damages issue.

Based on the evidence before it, the Court concludes that the International is liable for the acts of the Local. It is clear that the International Union, through the Constitution, By-Laws, etc. exercises a strict control over the Local, and the Local is clearly subordinate to the

International. This is an actual control, not theoretical. It is clear that, although the Defendant International did not, by the evidence before the Court, direct or in a formal way authorize the activity of the Local, it ratified or acquiesced in that activity.

On the issue of what law controls, this Court will follow established Florida law as set forth in *Lassitter*[1] rather than the line of cases represented by *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980). The application of Florida law is particularly appropriate because of the presence of violent conduct by Local 397. See *Farmer v. United Broth. of C & J of America, Local 75*, 430 U.S. 290, 296-97 (1977) (intentional infliction of emotional distress in labor law context; state law applicable); *Autoworkers v. Russell*, 356 U.S. 634 (1958) (mass picketing and threats of violence; state law applicable).

It should be emphasized that the Court's judgment in this matter is based on narrow grounds. The events of 1979 and 1980 were punctuated by violence and intimidation. The presence of these elements has traditionally invoked the state's jurisdiction because of the state's deeply rooted interest eliminating such conduct. Thus, the Court follows the agency standards generally applicable in Florida and rejects the assertion by Defendant that because it is a labor union, the proof of agency must meet a higher, more stringent standard than under Florida common law. *See Folwell v. Bernard*, 477 So.2d 1060 (Fla. 2d DCA 1985).

The Court now turns to its detailed Findings of Fact and Conclusions of Law.

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[1] *International Union of Operating Engineers, Local 675 v. Lassitter*, 295 So.2d 634 (Fla. 4th DCA 1974), *quashed on other grounds*, 314 So.2d 761 (Fla. 1975), *reversed and remanded on other grounds*, 325 So.2d 408 (Fla. 4th DCA 1975), *quashed and judgment entered by trial court reinstated*, 349 So.2d 622 (Fla. 1977).

II. FINDINGS OF FACT

A. *Local 397's Tortious Action*

In the Consent Judgment, Defendant Local 397 and Individual Defendants admitted liability for their tortious actions during the fall of 1979. The record clearly reflects the tortious, unlawful conduct of Local 397 and its members.

On the afternoon of October 26, 1979, over 400 [2] persons (T. 19),[3] including members of Defendant International (T. 80, 102-103, 150), engaged in a violent mass demonstration at Blount's McIntosh Unit No. 3 ("power plant") construction site on Lake Parker Drive in Lakeland, Florida. Because of the demonstrators' numbers and threatening actions, Blount employees were unable to enter or leave through the gates of the power plant construction site at their normal shutdown time of 3:30 p.m., and by order of Lakeland police, were required to remain within Blount's fenced construction site until approximately 6:15 p.m. (T. 38, 41-43).

Throughout the afternoon of October 26, 1979, the demonstration was marked by numerous acts of trespass and violence against Blount's employees, employee property (T. 323-34) and approximately seventy-five (75) sworn peace officers of the Lakeland Police Department and the Polk County Sheriff's Department (Tr. 43-44). Blount employees were able to leave the power plant construction site during the evening of October 26 only by being transported in covered panel trucks under police

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[2] In his deposition, Defendant Local 397 President, Charles M. "Tony" Pinion, who was at the demonstration, approximated that 600 to 700 people were present at the mass demonstration, including 400 to 500 Ironworkers within Local 397's jurisdiction (Pinion Depo., pp. 35-36).

[3] "Tr. ——" indicates the transcript page of the preliminary injunction hearing, held on November 1, 1979.

escort to a nearby employee parking lot. As the Blount employees jumped from the covered vans and ran to their automobiles, dozens of demonstrators attacked and injured both police and Blount employees. Only the presence of a human line of police in the parking lot prevented the onset of more serious injuries. (Tr. 43-46). During the afternoon of October 26, Lakeland police arrested at least four (4) demonstrators for offenses as varied as rioting, aggravated battery, resisting arrest with violence and trespass.[4]

Aside from physical violence, Blount employees were also subject to substantial verbal harassment. On October 26, 1979, and for several weeks thereafter, members of Defendant Local 397 threatened numerous Blount employees that they would "kick their ass," and made comments such as "are you sure your wife and kids are safe," and other threats of physical intimidation (T. 124-25).

Record evidence proves that only two (2) weeks before the mass demonstration, Local 397's officers actively participated in a rally which attracted the support of more than two thousand (2,000) individuals (Conner Depo., p. 83). One local official, Business Manager Billy Ray Conner, even addressed the crowd at that rally (Conner Depo., p. 82).

Local 397 went so far as to take aerial photographs of the job site several days before the incident which provoked this lawsuit (Conner Depo., p. 76). Immediately before the mass demonstration, Local 397 purchased 100 signs protesting Plaintiff's employment of non-union labor (Conner Depo., pp. 39-40). Local Union officials were also responsible for approving, planning and directing picketing activities (Conner Depo., p. 40).

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[4] All four (4) of these individuals who were arrested plead guilty and were fined or imprisoned, or both.

After the mass demonstration was dispersed on October 26, 1979, Local Union officials went to hospitals to attend to individuals injured during the violence, and to the jails to secure the release of Union members and supporters (Conner Depo., pp. 48-50). In the following weeks, Local Union officials continued to organize and support picketing activities. The Union even provided Port-O-Lets for the picketers (Conner Depo., p. 72; Dennison Depo., p. 67).

Against this backdrop of violence and intimidation, on October 27, 1979, Plaintiff sought and obtained a temporary restraining order and a preliminary injunction. Numerous pickets were arrested by the Lakeland Police for violating the terms of the Preliminary Injunction. At no time did the International's Southeastern Vice-President, John Walsh, make any effort to ensure Local 397's compliance with the injunction, even though he was informed of its existence by both Conner and the International's General Secretary's office (Walsh Deposition at p. 76). Nor did Defendant International make *any* effort to bring charges against those individuals responsible for the tortious activities and the mass demonstration—even though these actions were contrary to the International's own Constitution.[5]

Furthermore, the International made absolutely no effort to punish Defendant Local 397, or to suspend or revoke its charter. Defendant International failed to communicate, in any way, either to its members or to the public, that it disapproved of or objected to the unlawful activities. Instead, it stood mutely by and acquiesced in the numerous public statements made by the local union

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[5] In his Affidavit, at ¶ 6, Juel Drake, an International official, insinuates that Plaintiff somehow was remiss in not seeking to have Defendant International press charges against Defendant Local 397. This assertion is without basis, since matters relating to union discipline are exclusively internal union affairs, as to which Plaintiff has no standing to participate.

officials and their unlawful activities. If it did not sanction such unlawful action, surely Defendant International could have made its position known. Instead, it did nothing. Such silence in the face of Local 397's admitted tortious activities, speaks volumes regarding Defendant International's acquiescence.

Plaintiff seeks in this matter more than $180,000.00 in compensatory and punitive damages, plus pre-judgment interest,[6] sustained as a direct result of Defendant Local 397's and Individual Defendant's admitted illegal picketing, violent conduct and other related illegal activities based on Florida common law—actions which are attributable to Defendant International and for which it is culpable under the doctrine of *respondeat superior*.

B. *Defendant International's Constitution Mandates A Close Relationship With Local 397*

The Court finds that Defendant International is the parent organization of Defendant Local 397, which maintains considerable control over the affairs of Defendant Local 397, through the express terms of its Constitution and Defendant Local 397's By-Laws.

A review of several significant sections of the International's Constitution demonstrates the International's pervasive control over Defendant Local 397. For example, Local 397's By-Laws had to be approved by Defendant International before they became effective (Const., Art. XXI, § 4). The International's general president has "full authority" to suspend any local officer

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[6] On May 21, 1986, Plaintiff moved for entitlement to Pre-Judgment Interest should Plaintiff be awarded compensatory damages. Argument was heard on May 2, 1986, and the Court took the motion under consideration. The Court now rules that Plaintiff is entitled to pre-judgment interest at the statutory rate from the date of loss for any damages which are awarded. *Trend Coin Company v. Honeywell, Inc.*, 487 So.2d 1029 (Fla. 1986); *Argonaut Ins. Co. v. May Plumbing Co.*, 474 So.2d 212 (Fla. 1985).

(Const., Art. IX, § 13), and to suspend or revoke local charters (Const., Art. IX, §§ 10 and 11; *see also* Const. Art. XXI, § 17). Similarly, the General Executive Council of Defendant International has the exclusive authority to revoke local charters for a variety of reasons, including failure to observe organizing plans or policies promulgated by the International (Const., Art. III, § 5) and failure to get new collective bargaining agreements approved by Defendant International before their execution (Const., Art. XXI, § 29, paragraph A).

Defendant International exercises considerable control over Defendant Local 397's local business decisions. Defendant International has the power to prohibit Local 397 from taking any action with an employer—including the mere proposal of contract terms—without the International's prior approval (Const., Art. XXI, § 29). The Constitution also provides that no local union shall make a settlement relating to any loss incurred without the International's written approval (Const., Art. XXI, § 21) and that no local union can call a strike or work stoppage without the sanction and approval of the International (Const., Art. XXI, § 28).

Even minute, day-to-day business procedures are closely governed and controlled by the International. Under the Constitution, Defendant International has the authority to dictate the system of accounting and bookkeeping used by the locals (Const., Art. XXI, § 10), and to provide rules and regulations governing all locals (Const., Art. XII, § 11).

The Constitution also allows the International to control the political processes of the Local. It sets forth the officers who may be elected to serve the local members (Const., Art. XXVI, § 1) and their specific responsibilities and authority (Const., Art. XXVI, §§ 2 through 7, 9, 10 and 12). No member can qualify to campaign for a union office without the express approval of the International (Const., Art. XXI, § 2). The International

even has censorship powers over certain written communications issued by the local (Const., Art. XXI, § 26).

The International's Constitution further provides that charges can be preferred against any local union or member for, among other things, violating any provision of the Constitution, advocating any member or local to withdraw from the International or "doing any act or thing which is intended or likely to injure the Association, or to bring discredit upon it. . . ." (Const., Art. XIX, Sec. 10).

The deposition testimony of Billy Ray Conner, who at the time he was deposed, was the general organizer for Defendant International, as well as Local 397's business manager, illustrates the subservient relationship between Defendant Local 397 and Defendant International:

Q. Do you ever—have you ever had occasion to write to the International about any matter that was going on at the local?

A. Interpretation of our By-Laws or interpretation of the general working rules, which we're bound by.

Q. Thees general working rules, are those put out by the International?

A. Yes sir.

Q. And they apply to every local?

A. Yes sir.

Q. Excuse me, I just don't know what these general working rules are. Could you describe those for me?

A. They're a set of rules along with the Constitution. It describes safety minimum requirements for people on a crane, International agreements, duties of a steward. They're just what they

say, general working rules as a guideline to set up construction jobs.

Q. And what about these By-Laws, does the International have a set of By-Laws?

A. Well, they have a Constitution and the local unions have a set of By-Laws. And the By-Laws are approved by the membership and when we need an interpretation, after the membership votes, our By-Laws are sent to the International. And if, for some reason, that two parties can't agree on exactly what the By-Laws state or should state, then we write General Secretary Drake for an interpretation.

Q. Do you ever have to send proposed contracts to the International for their review.

A. We send all contracts after they are negotiated for their approval, which I've never heard of one being disapproved. They keep a copy.

Q. But they're all sent to International?

A. Yes sir. That's not, now, like we negotiate a contract with a local contractor, it's our negotiated agreement.

Q. Are there any other instances that you can think of when Local 397 would be in contact with the International?

A. We send them our monthly dues and receipts.

Q. Do they ever send you any money?

A. No sir.

Q. One-way street?

A. Well, it's their charter. They tell you right quick, "The wood belongs to you, the charter belongs to us."

Deposition of Billy Ray Conner, pp. 10-11.

Mr. Conner's deposition testimony clearly shows that the control described in the International's Constitution is actual and extensive. This point is further demonstrated by the pervasive involvement of the International in Local 397's business affairs. Minutes of the business meetings of Local 397 reflect constant discussions concerning the business, betterment and support of the International.

C. *Local 397's By-Laws Are Expressly Subordinate To The International's Constitution*

Defendant Local 397's subordinate status is punctuated by its By-Laws, which mirror Defendant International's Constitution, and further reinforce Plaintiff's contention that an agency relationship exists between Defendant International and Local 397. Perhaps no single section better demonstrates this agency relationship than the By-Laws' Preamble, which provides:

> This organization shall be known as Local Union No. 397 of the International Association of Bridge, Structural and Ornamental Ironworkers. This Local Union is chartered by the International Association of Bridge, Structural and Ornamental Ironworkers and operates under the Constitution adopted by the International Association in Convention assembled. These By-Laws shall not be considered as superseding any provision of the Constitution of the International Asociation, and any provision contained herein which may be in conflict with or a violation of any amendment to or revision hereinafter made in the Constitution of the International Association shall be considered null and void.

Many of the By-Laws' substantive provisions state only that conduct will be governed by the terms of the International Constitution. *See, e.g.*, By-Laws, Art. II,

§ 2; By-Laws, Art. III, §§ 1, 2, 3; By-Laws, Art. VIII, § 1; and By-Laws, Art. IX.[7]

Other provisions relinquish to Defendant International almost total control over the Local's affairs. For example, the Local President or Executive Committee cannot call special meetings without the International's approval (By-Laws, Art. I, ¶ 2). Nor can Local 397 increase membership dues without the approval of the International (By-Laws, Art. II, § 3). The By-Laws themselves did not become effective until they were approved by the International (By-Laws, Art. XII). Had the International not approved the By-Laws, they would be considered null and void. *Id.*

In addition to the direct evidence that the International and Local 397 "participated in" the unlawful mass demonstration, indirect evidence indicates that the International and Local 397 were closely interrelated and that there was most likely an agency relationship among the International, Local 397 and their members. Members and officers of Local 397 participated in many diverse activities sponsored or participated in by the International, such as AFL-CIO, COPE (Committee On Political Education) and District Council meetings. As noted earlier, the business of the International was a common subject of discussion at Local 397 meetings.

III. CONCLUSIONS OF LAW

The entry by the Court of the Consent Judgment on June 13, 1986, resolves any questions as to Local 397's tortious conduct against Defendant. Thus, based on the record evidence, the issue is whether an agency relationship exists between Local 397 and its parent, the International, sufficient to create liability. Based on a review of the International's Constitution, the Local's By-Laws,

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[7] "By-Laws, Art. ——, § ——". refers to Local By-Laws, Article ——, Section ——.

minutes of the Local's meetings and d position testimony, the Court concludes that Local 397 acted as an agent for the International when it was engaged in these tortious activities and that the International is liable for damages sustained by Plaintiff as a result of these activities.

A. *The Presence of Violence Requires the Application of Florida Law*

1. *Inapplicability of Federal Law*

Plaintiff's claim of tortious interference with business relationships is based on the damages caused by the violent and tortious conduct of the members of Local 397 in 1979 and 1980. The United States Supreme Court has long recognized that such claims are governed by state law. *Farmer v. United Brotherhood of Carpenters and Joiners*, 430 U.S. 290, (1977); *United Automobile Workers v. Russell*, 356 U.S. 634 (1958). *See also Rainbow Tours, Inc. v. Hawaii Joint Counsel of Teamsters*, 704 F.2d 1443 (9th Cir. 1983); *Adolph Coors Co. v. Sickler*, —— F.Supp. ——, 119 LLRM 2829 (C.D. Calif. 1985).

The violence exception to pre-emption is based on the states' compelling interest in protecting their citizens from violence. The Supreme Court acknowledged this overriding interest in *Farmer v. United Brotherhood of Carpenters Joiners*:

> [O]ur cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order and the use of streets and highways." [citations omitted] and . . . state court actions to address injuries caused by violence or threats of violence are consistent with the effect of administration of the federal scheme: Such actions can be adjudicated without regard to the merits of the underlying labor controversy.

Farmer, 430 U.S. at 299-300.

Thus, this court is bound by Florida and not federal agency law in determining if the Defendant International is liable for the conduct of its members. Indeed, agency law to determine liability in a tortious interference case. *Tamiami Trail Tours, Inc. v. J.C. Cotton and Aubry Jesse Cotton*, 463 So.2d 1126 (1985).

2. *General Principles of Agency*

Since this action is brought pursuant to Florida law, Florida standards of agency and *respondeat superior* are relevant to determine whether the International is responsible for the torts of Local 397. Florida courts long have recognized that labor unions and their memberships may be liable, under general agency principles, for torts committed by their agents. *See International Union of Operating Engineers, Local No. 487 v. Long*, 362 So.2d 987 (Fla. 3d DCA 1978), *cert. den.*, 372 So.2d 469 (Fla. 1979).

The seminal Florida case addressing the liability of an international union for the wrongful and tortious actions of its agents is *International Union of Operating Engineers, Local 675 v. Lassitter*, 295 So.2d 634 (Fla. 4th DCA 1974), *quashed on other grounds*, 314 So.2d 761 (Fla. 1975), *reversed and remanded on other grounds*, 325 So.2d 408 (Fla. 4th DCA 1975), *quashed and judgment entered by trial court reinstated*, 349 So.2d 622 (Fla. 1977). In *Lassitter*, a case involving tortious conduct of an individual union member during a jurisdictional dispute, the court, in finding the internatonal union vicariously liable, applied the common law agency doctrine of *respondeat superior*. The court held that the finder of fact, in determining the existence, *vel non*, of that agency relationship, may properly scrutinize union constitutional provisions. The court held that "[u]pon evidence of *pervasive constitutional control*, the international union may have an agency relationship with the local and that this jury was justified in finding that relationship." 295 So.2d at 638 (emphasis added).

In finding that such pervasive constitutional control existed, the *Lassitter* court found that the international constitution specifically provided for its complete domination over the local. The Operating Engineers' international constitution authorized the international president to suspend or remove local officers, and to suspend or revoke local charters. Further, that constitution provided the international with the power to prohibit locals from taking any action with an employer, unless authorized by the international. Moreover, the local was referred to as a subordinate subdivision of the international. The *Lassitter* court correctly noted that similar language found in the Teamsters' constitution in *International Brotherhood of Teamsters v. United States*, 275 F.2d 610 (4th Cir. 1960), was sufficient to warrant the conclusion that the local was merely a subordinate component of the international. 295 So.2d at 638.

In holding that an agency relationship, sufficient to bind the international, can arise where the international maintains a position of complete domination over the local, the *Lassitter* court relied principally upon two Virginia cases, *United Brotherhood of Carpenters and Joiners v. Humphries*, 203 Va. 781 (1962), *cert. den.*, 371 U.S. 954 (1963); *United Construction Workers v. Laburnum Construction Corp.*, 194 Va. 872, *aff'd*, 347 U.S. 656 (1954).[8] In both cases, the courts held, on facts similar to *Lassitter*, that all defendants were liable, including the international union. The *Humphries* court stressed "the very nature of the organization of the International Union was sufficient to show that the district organization was an arm of the International, and an agency relationship existed between the two bodies." 127 S.E.2d at 102.

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[8] Both *Humphries* and *Laburnum* remain the law of Virginia. *See Old Dominion Branch No. 496, N.A.L.C. v. Austin*, 192 S.E.2d 737, 743 (Va. 1972) *reversed on other grounds*, 418 U.S. 264 (1974); *Broaddus v. Standard Drug Company*, 179 S.E.2d 497, 503 (Va. 1971).

Lassitter is still the law in Florida. Moreover, the *Lassitter* court's holding that total domination is a critical element in determining the existence of an agency relationship has been followed in subsequent cases. *See Church of Scientology of California v. Blackman*, 446 So.2d 190, 192 (Fla. 4th DCA 1984); *Ortega v. General Motors Corp.*, 392 So.2d 40 (Fla. 4th DCA 1980). *Fernandez v. Valle*, 364 So.2d 835 (Fla. 3d DCA 1978). *Cf. Folwell v. Bernard*, 477 So.2d 1060 (Fla. 2d DCA 1985) (imposition of vicarious liability is unwarranted absent evidence revealing that one entity, the purported principal, dominates and controls the other)[9].

The holding in *Lassitter* was based principally on the pervasive control maintained through the constitution by the international over its offending local. In this case, however, the International's control is greater than simply the Constitution's mandate. The pervasive and extensive control which the International maintains over Local 397 is also reflected in the Local's By-Laws, the Local's minutes and the deposition testimony of Local Business Agent Conner and International Vice President Walsh.

Defendant argues that the agency standard to be applied by this Court is set forth in *Carbon Fuel Company v. United Mine Workers of America*, 444 U.S. 212 (1979). The Court finds *Carbon Fuel* inapplicable for several reasons. First, Florida maintains a deeply rooted interest in applying its own remedies for violent conduct, regardless of whether it arises in a labor or non-labor context. Accordingly, the agency standard applicable under Florida law is applied to the relationship between the International and its Local. Under Florida agency law, the Court believes it is clear that

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[9] Although the panel in *Folwell v. Bernard, supra, in dictum*, questioned the vitality of *Lassitter*, the court, nevertheless, used a *Lassitter*-type analysis and found the record insufficient to support a finding of complete domination.

the International is the principal of the Local for purposes of liability. *See Folwell v. Bernard, supra; Lassitter,* supra; *Fernandez v. Valle, supra.*

Second, *Carbon Fuel* and the rule it sets forth regulates the delicate balance applicable between an international union and its local in the context of the Labor-Management Relations Act, 29 U.S.C. § 151, *et seq.* (LMRA). The protection which *Carbon Fuel* and the LMRA provides to international unions is inapplicable in this common law tort action.

Finally, the standard of proof of agency utilized in *Carbon Fuel* follows that of *Coronado Coal Co. v. Mine Workers,* 268 U.S. 295, 304 (1925) which requires that proof of agency ". . . must be clearly shown . . . ." In contrast, Florida law requires proof of agency only by a preponderance of the evidence. Plaintiff has proven the agency relationship between the International and Local 397 has been demonstrated by Plaintiff by a preponderance of the evidence.

C. *The Record Evidence Demonstrates an Agency Relationship Between the International and Local 397 Sufficient to Create Liability*

Lassitter makes clear that the Court must examine the language of the Constitution to determine the relationship of Defendant International to its local unions and to individual members. The terms of that Constitution, as set forth in the findings of fact, convincingly show that Defendant International completely dominates Defendant Local 397's affairs, and that Defendant Local 397 and its members are, therefore, Defendant International's agents. Throughout that Constitution, local unions intermittently are treated as subordinate bodies. Similar language has weighed heavily in cases where the local union or its members have been held to be agents of the international. *See, e.g., International*

Union of Operating Engineers, Local No. 675 v. Lassitter, 295 So.2d at 638; *International Brotherhood of Teamsters v. United States, supra.*

1. *The Record Shows That The Degree Of Autonomy Exercised By Defendant International Over Defendant Local 397 Was Actual, Not Theoretical, Control*

Numerous courts have held that it is the amount of actual, as well as theoretical, control which is exercised by an international which should be considered in determining the existence of an agency relationship. *See International Union of Operating Engineers, Local No. 675 v. Lassitter, supra; Harnischfeger Corp. v. Sheet Metal Workers International Association*, 436 F.2d 351 (6th Cir. 1970); *NLRB v. International Longshore and Warehouse Union*, 283 F.2d 558 (9th Cir. 1960).[10]

From the record, it is obvious that Defendant International, both theoretically and actually, maintains complete domination and control over its local unions, including Defendant Local 397. As Mr. Conner testified, the International Union makes it abundantly clear to its local unions that the International wields ultimate authority over the local unions. Mr. Conner further testified that if the local union does not adhere to the International's guidelines, the International has the right to revoke the charter.

The record further shows that Defendant Local 397 does not function as an autonomous body. Rather, both

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[10] This case stands in contrast to cases such as *Shimman v. Frank*, 625 F.2d 80, 98 (6th Cir. 1980), where, apparently, there was not a clear record of actual control by the international over the union. In *Shimman*, the court disapproved cases where it appeared that there was only theoretical, not actual, control. Here, however, the record abounds with evidence of both theoretical *and* actual control by Defendant International.

in theory and in practice, it functions merely as a subordinate body to, and an agent of, Defendant International. The Court therefore finds that Defendant International completely dominates the affairs of Defendant Local 397 and that Local 397 is an agent of Defendant International. *Folwell v. Bernard, supra; International Union of Operating Engineers, Local No. 675 v. Lassitter, supra.* Accordingly, Defendant International is vicariously liable, under the doctrine of *respondeat superior*, for the actions of its agents.

2. *Through The Conduct Of Defendant Local 397 And Individual Union Members, Defendant International Participated In Unlawful Activities*

Defendant Local 397 and the Individual Defendants have admitted to engaging in, and participating in, unlawful activities at the City of Lakeland power plant in the fall of 1979. Since there is no dispute in that regard, the sole remaining question is the extent of Defendant International's participation in, or ratification of, the tortious actions of Defendant Local 397 and the Individual Defendants. It is well settled that a union is liable for the torts of its officers or members if the "union officers or members authorized, participated in, or ratified the tortious acts." *International Union of Operating Engineers, Local 487 v. Long*, 362 So.2d 987, 989 (Fla. 3d DCA 1978), *cert. den.*, 372 So.2d 469 (Fla. 1979). The admitted participation of Defendant Local 397 and the Individual Defendants is sufficient to bind Defendant International. The Court concludes that Defendant Local 397 and the Individual Defendants, as officers and members of Local 397, were agents of Defendant International, rendering Defendant International vicariously liable. *International Union of Operating Engineers, Local 487 v. Long, supra.*

3. *Defendant International Ratified Or Acquiesced In The Admitted Unlawful Activities Of Defendant Local 397 And The Individual Defendants*

Because many of its members were present when the events in question occurred, the evidence demonstrates that Defendant International knew or should have known of the admitted tortious conduct perpetrated against Plaintiff. The International contends, nevertheless, that it did not approve of or ratify the picketing because it was not formally-sanctioned.

Such formal sanction by Defendant International is not required for the actions of its agents to bind the International under Florida law. Indeed, when one considers that Defendant Local 397 and the Defendant International had the common goal of forcing Plaintiff to use union labor at its Lakeland power plant, the International's defense begs the very question as to whether the International authorized, approved or ratified the conduct of the Local and the individual members.

Finally, one of the individuals who played a substantial, provocative role in the picketing and mass demonstration, Billy Ray Conner, was promoted in 1981 to a general organizer position with Defendant International. If Mr. Connor had acted contrary to the Constitution and if Defendant International did not approve or ratify his actions, the Court questions whether he would have been promoted to such a position of authority within the International.

The Court concludes, therefore, that at a minimum, Defendant International ratified or acquiesced in the tortious conduct of the Local and its individual members.

IV. CONCLUSION

The record evidence in this case conclusively shows that Defendant Local 397 and the Individual Defendants were acting as agents of Defendant International during

the fall of 1979 when they engaged in their course of admitted tortious activities against Plaintiff. Since those individuals were acting as agents of Defendant International when they engaged in such unlawful activities, Defendant International is vicariously liable for such misconduct under the doctrine of *respondeat superior*. Lassitter, *supra*. Finally, Plaintiff submits that the record shows that Defendant International actively participated in, ratified and acquiesced in Defendant Local 397's and the Individual Defendants' actions.

Accordingly, the Court concludes that Defendant International is liable for the unlawful conduct engaged in by Defendant Local 397 and the Individual Defendants. Only the damage issue remains before the Court. The parties are instructed to confer regarding mutually agreeable dates for a hearing on the damages by the Court.

An appropriate Judgment accompanies these Findings and Conclusions.

Done this 12th day of January, 1987.

/s/ J. Randolph Bentley
THE HONORABLE J. RANDOLPH BENTLEY

cc: A.H. Lane, Esq.
Gary R. Kessler, Esq.
Mark F. Kelly, Esq.
David Rosenfeld, Esq.

APPENDIX C

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA
SECOND DISTRICT

Case No. 87-448

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, AFL-CIO.
Appellant,

v.

BLOUNT INTERNATIONAL, LTD.,
Appellee.

Opinion filed November 13, 1987

Appeal from nonfinal order of the
Circuit Court for Polk County
E. Randolph Bentley, Judge

Victor J. Van Bourg and David A. Rosenfeld of Van Bourg, Weinberg, Roger & Rosenfeld, San Francisco, California; Mark F. Kelly and Robert F. McKee of Kelly & McKee, P.A., Tampa, for Appellant.

Gary R. Kessler and David L. Gordon of Jackson, Lewis, Schnitzler & Krupman, Atlanta, Georgia; A. H. Lane of Lane, Trohn, Clarke, Bertrand & Williams, P.A., Lakeland, for Appellee.

CAMPBELL, Acting Chief Judge.

Appellant, defendant below, International Association of Bridge, Structural & Ornamental Ironworkers, AFL-CIO, takes this interlocutory appeal from the trial court's order finding appellant liable to appellee, plaintiff below, Blount International, Ltd., for the tortious acts of its Local 397 union.

Appellee's action below was brought against appellant, its Local 397 union and various individual defendants who were members and/or officers of Local 397. Appellee's cause of action was premised on allegations of tortious interference with appellee's performance of its contract with the City of Lakeland and on allegations of the violation of various Florida Statutes relating to trespass by the defendants below. In the action in the trial ocurt, the issues of liability and damages were bifurcated. All of the defendants below, except for appellant, entered into a consent judgment on the issue of liability.

Appellant and appellee stipulated that the issue of appellant's liability for the tortious acts of its Local 397 was controlled by the existence, or lack of it, of an agency relationship between appellant and its Local 397. The parties further stipulated that the question of the agency relationship should be resolved by the trial court below, acting without a jury, on the basis of the parties' submissions in support of and in opposition to appellant's motion for summary judgment. The trial court concluded, on the basis of extensive findings of fact and conclusions of law, that under Florida law an agency relationship had been shown to exist between appellant and its Local 397 so that appellant was liable for the tortious acts committed in Florida by its Local 397. We find that there is sufficient evidence in the record to support the findings and conclusions of the trial judge and affirm.

In the consent judgment entered in regard to Local 397, and the other individual defendants, those defendants admitted:

> The conduct of the Individual Defendants and of the agents, representatives and members of Local 397 on October 26, 1979, was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the State of Florida. Furthermore, the Defendants party to this Consent Judgment admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct which occurred during the latter part of October, 1979, at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

Appellant relies primarily on the cases of *Carbon Fuel Co. v. United Mine Workers*, 444 U.S. 212, 100 S.Ct. 410, 62 L.Ed.2d 394 (1979); *United Mine Workers v. Coronado Coal Co.*, 259 U.S. 344, 42 S.Ct. 570, 66 L.Ed. 975 (1922); *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980); and tangentially, *Folwell v. Bernard*, 477 So.2d 1060 (Fla. 2d DCA 1985). *Carbon Fuel* considered an action brought under the federal Labor Management Relations Act, Taft-Hartley Act, 29 U.S.C. § 185 (1947). *Coronado Coal* was a decision considering whether there was a cause of action under the federal Sherman Antitrust Act. *Shimman* was an action brought under the Landrum-Griffin Act, 29 U.S.C. § 411, and also involved a claim under 42 U.S.C. § 1985(3) and § 1986, and a "pendant claim under Ohio state law." In *Folwell*, we were confronted with the interpretation of an ecclesiastical relationship between a parent church and a local subordinate body. We determined in *Folwell* that the constitution and canons pertaining to the parent church

and local body were more in the nature of a constract and should be interpreted as a matter of law. We interpreted those documents as failing to disclose domination by the parent church over the local body in the everyday secular affairs as opposed to its ecclesiastical control of the local body. We, therefore, determined in that ecclesiastical situation that dominance over ecclesiastical dogma could not serve as a bridge capable of affording a method to hold the parent civilly liable for the tort of the subordinate committed solely in regard to its day to day secular affairs.

In *Folwell*, while still applying the reasoning of *International Union of Operating Engineers, Local 675 v. Lassitter*, 295 So.2d 634 (Fla. 4th DCA 1974), *quashed on other grounds*, 314 So.2d 761 (Fla. 1975), *rev'd. and remanded on other grounds*, 325 So.2d 408 (Fla. 4th DCA 1975), *quashed and judgment entered by trial court reinstated*, 349 So.2d 622 (Fla. 1976), we speculated as to the continued correctness of *Lassitter* in the light of *Shimman*. We conclude that *Lassitter* is still the controlling law in Florida on the question of agency relationships of parent or international unions and their subordinate local unions, particularly where there has not been a preemption by federal law.

The United States Supreme Court has specifically held in *Farmer v. Carpenter*, 430 U.S. 290, 97 S.Ct. 1056, 51 L.Ed.2d 338 (1977), that there is an exception to the general rule of the doctrine of federal preemption of state court jurisdiction in the labor law area in cases involving violent tortious activity. The supreme court there held:

> Similar reasoning underlies the exception to the pre-emption rule in cases involving violent tortious activity. Nothing in the federal labor statutes protects or immunizes from state action violence or the threat of violence in a labor dispute, *Automobile*

Workers v. Russell, 356 U.S., at 640, 2 L.Ed.2d 1030, 78 S.Ct. 932; *id.* at 649, 2 L.Ed.2d 1030, 78 S.Ct. 932 (Warren, C. J., dissenting); *United Construction Workers v Laburnum Constr. Corp.*, 347 U.S. 656, 666, 98 L.Ed. 1025, 74 S.Ct. 833 (1954), and thus there is no risk that state damage actions will fetter the exercise of rights protected by the NLRA. On the other hand, our cases consistently have recognized the historic state interest in "such traditionally local matters as public safety and order and the use of streets and highways." *Allen-Bradley Local v. Wisconsin Empl. Rel. Bd.*, 315 U.S. 740, 749, 86 L.Ed. 1154, 62 S.Ct. 820 (1942). And, as with the defamation actions preserved by Linn, state court actions to redress injuries caused by violence or threats of violence are consistent with effective administration of the federal scheme; such actions can be adjudicated without regard to the merits of the underlying labor controversy. *Automobile Workers v. Russell*, supra, at 649, 2 L.Ed.2d 1030, 78 S.Ct. 932 (Warren, C. J., dissenting).

. . . .

The State, on the other hand, has a substantial interest in protecting its citizens from the kind of abuse of which Hill complained. That interest is no less worthy of recognition because it concerns protection from emotional distress caused by outrageous conduct, rather than protection from physical injury, as in *Russell*, or damage to reputation, as in *Linn*. Although recognition of the tort of intentional infliction of emotional distress is a comparatively recent development in state law, *see* W. Prosser, *Law of Torts* § 12, pp. 49-50, 56 (4th ed. 1971), our decisions permitting the exercise of state jurisdiction in tort actions based on violence or defamation have not rested on the history of the tort at issue, but

> rather on the nature of the State's interest in protecting the health and well-being of its citizens.

51 L.Ed.2d at 349-352.

Considered in the light of that holding by the supreme court and in consideration of the provision of the consent judgment set forth above, the trial court was eminently correct in its conclusion below that:

> It should be emphasized that the Court's judgment in this matter is based on narrow grounds. The events of 1979 and 1980 were punctuated by violence and intimidation. The presence of these elements has traditionally invoked the state's jurisdiction because of the state's deeply rooted interest in eliminating such conduct. Thus, the Court follows the agency standards generally applicable in Florida and rejects the assertion by Defendant that because it is a labor union, the proof of agency must meet a higher, more stringent standard than under Florida common law.

In adhering to the interpretion by the Florida courts of the applicable law in this state, we are mindful of the rule that state courts, in construing and intepreting state law, are not bound by the decisions of federal courts. State courts are bound only to apply the provisions of the Constitution of the United States and the lawful Acts of Congress and are not bound by any federal court regarding the interpretation of state law and only by the United States Supreme Court in regard to interpretations of the United States Constitution and Acts of Congress. Art. VI, ch. 2, U.S. Const.; *State v. Dwyer*, 332 So.2d 333 (Fla. 1976); *Bradshaw v. State*, 286 So.2d 4 (Fla. 1973); *State v. Moyle*, 705 P.2d 740, 750 (Ore. 1985); *People v. Estrada*, 44 Cal.Rptr. 165 (Cal. 1st DCA 1965).

The sole question stipulated below for the trial judge to resolve as determinative of the issue of appellant's

liability for the tortious acts of its Local 397 union was the question of the agency relationship between appellant and Local 397. In Florida, the question of agency is one of fact to be determined by the trier of fact. *Cleveland Compania v. Logoehetis*, 378 So.2d 1336 (Fla. 2d DCA 1980); *Church of Scientology of California v. Blackman*, 446 So.2d 190 (Fla. 4th DCA 1984). Where there is evidence to support the trier of fact on a finding of fact, that finding will not be disturbed on appeal.

The *Lassitter* court held that a union's constitution may be examined to determine whether it can produce evidence upon which the trier of fact can determine that an International Union is given such pervasive constitutional control of the local union that an agency relationship may be found to exist. *Lassitter*, 295 So.2d at 638.

The trial court made the following findings and conclusions:

> Based on the evidence before it, the Court concludes that the International is liable for the acts of the Local. It is clear that the International Union, through the Constitution, By-Laws, etc. exercises a strict control over the Local, and the Local is clearly subordinate to the International. This is an actual control, not theoretical. It is clear that, although the Defendant International did not, by the evidence before the Court, direct or in a formal way authorize the activity of the Local, it ratified or acquiesced in that activity.
>
> On the issue of what law controls, this Court will follow established Florida law as set forth in *Lassitter* rather than the line of cases represented by *Shimman v. Frank*, 625 F.2d 80 (6th Cir. 1980). The application of Florida law is particularly appropriate because of the presence of violent conduct by Local 397.
>
> ....

The Court finds that Defendant International is the parent organization of Defendant Local 397, which maintains considerable control over the affairs of Defendant Local 397, through the express terms of its Constitution and Defendant Local 397's By-Laws.

A review of several significant sections of the International's Constitution demonstrates the International's pervasive control over Defendant Local 397. For example, Local 397's By-Laws had to be approved by Defendant International before they became effective (Const., Art. XXI, § 4). The International's general president has "full authority" to suspend any local officer (Const., Art. IX, § 13), and to suspend or revoke local charters (Const., Art. IX, §§ 10, 11; *see also* Const., Art. XXI, § 17). Similarly, the General Executive Council of Defendant International has the exclusive authority to revoke local charters for a variety of reasons, including failure to observe organizing plans or policies promulgated by the International (Const., Art. III, § 5) and failure to get new collective bargaining agreements approved by Defendant International before their execution (Const., Art. XXI, § 29, para. A).

Defendant International exercises considerable control over Defendant Local 397's local business decisions. Defendant International has the power to prohibit Local 397 from taking any action with an employer—including the mere proposal of contract terms—without the International's prior approval (Const., Art. XXI, § 29). The Constitution also provides that no local union shall make a settlement relating to any loss incurred without the International's written approval (Const., Art. XXI, § 21) and that no local union can call a strike or work stoppage without the sanction and approval of the International (Const., Art. XXI, § 28).

> Even minute, day-to-day business procedures are closely governed and controlled by the International. Under the Constitution, Defendant International has the authority to dictate the system of accounting and bookkeeping used by the locals (Const., Art. XI, § 10), and to provide rules and regulations governing all locals (Const., Art. XII, § 11).
>
> The Constitution also allows the International to control the political processes of the Local. It sets forth the officers who may be elected to serve the local members (Const., Art. XXVI, § 1) and their specific responsibilities and authority (Const., Art. XXVI, §§ 2 through 7, 9, 10 and 12). No member can qualify to campaign for a union office without the express approval of the International (Const., Art. XXI, § 2). The International even has censorship powers over certain written communications issues by the local (Const., Art. XXI, § 26).
>
> The International's Constitution further provides that charges can be preferred against any local union or member for, among other things, violating any provision of the Constitution, advocating any member or local to withdraw from the International or "doing any act or thing which is intended or likely to injure the Association, or to bring discredit upon it. . . ." (Const., Art. XIX, § 10).

In addition, this court notes that the constitution of appellant, article XXVI, specifically sets forth the "Constitution Governing All Local Unions" leaving only the local by-laws which can be developed by local unions but must be approved by appellant. Further, we note that appellant's constitution, article XXI, section 2, provides that all persons seeking to become members of the local union (the individual defendants below) must have a copy of their application for membership in the local union sent to appellant's international headquarters for

approval. That section further provides that if a candidate for membership is rejected by the local union, the application of the rejected candidate with the reasons for rejection must be sent to appellant's headquarters.

We, therefore, find sufficient evidence to support the finding by the trial court of dominance by appellant over Local 397. That dominance justifies the finding of agency and the resulting liability of appellant for the tortious acts of Local 397.

Affirmed.

SCHOONOVER, J., and PACK, R. WALLACE, Associate Judge, Concur.

APPENDIX D

IN THE SECOND DISTRICT COURT OF APPEAL
LAKELAND, FLORIDA

February 8, 1988

Case No. 87-448

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL & ORNAMENTAL IRONWORKERS, AFL-CIO,
Appellant,

v.

BLOUNT INTERNATIONAL, LTD.,
Appellee.

Counsel for appellants having filed a motion for rehearing and motion for rehearing en banc in the above-styled case, upon consideration, it is

ORDERED that said motion is hereby denied.

A TRUE COPY

ATTEST:

/s/ William A. Haddad
WILLIAM A. HADDAD
Clerk
Second District Court of Appeal

cc: Victor J. Van Bourg, Esq.
Gary R. Kessler, Esq.
A. H. Lane, Esq.
Mark F. Kelly, Esq.

APPENDIX E

SUPREME COURT OF FLORIDA

Tuesday, July 19, 1988

Case No. 72,094

INTERNATIONAL ASSOCIATION OF BRIDGE STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,
Petitioner,

v.

BLOUNT INTERNATIONAL, LTD.,
Respondent.

District Court of Appeal,
Second District No. 87-448

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

EHRLICH, C.J., OVERTON, GRIMES and KOGAN, JJ, concur.

BARKETT, J., dissents.

A TRUE COPY

TEST:

SID J. WHITE
Clerk Superior Court

[SEAL]

By: /s/ [Illegible]
Deputy Clerk

cc: Hon. William A. Haddad, Clerk
Hon. E. D. "Bud" Dixon, Clerk
Hon. E. Randolph Bentley, Judge
Mark F. Kelly, Esquire
Gary R. Kessler, Esquire
A. H. Lane, Esquire
David A. Rosenfeld, Esquire
David L. Gordon, Esquire

Supreme Court, U.S.
FILED
DEC 6 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-622

In The

Supreme Court of the United States

October Term, 1988

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,

Petitioner,

vs.

BLOUNT INTERNATIONAL, LTD.,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT COURT OF APPEAL SECOND DISTRICT STATE OF FLORIDA

BRIEF OF RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Did the Florida courts properly apply established Florida law in finding that an agency relationship existed between the International Association of Bridge, Structural and Ornamental Ironworkers and its subordinate Local sufficient to impose liability on the International for the intentional tortious conduct of the Local where the state courts below concluded that the International controlled and dominated the affairs of the Local and ratified or acquiesced in the admitted tortious conduct of the Local?

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BACKGROUND

On the afternoon of October 26, 1979, over four hundred (400) persons, including members of the International Association of Bridge, Structural and Ornamental Ironworkers ("Petitioner" or "International") engaged in a violent mass demonstration at Blount International, Ltd.'s ("Respondent" or "Blount") McIntosh Unit No. 3 power plant construction site on Lake Parker Drive in Lakeland, Florida (App. to Petition at p. 6a).[1] Because of the demonstrators' numbers and threatening actions, Blount employees were unable to enter or leave through the gates of the power plant site at their normal shut-down time of 3:30 p.m. By order of the Lakeland police, Blount employees were required to remain within the fenced site until approximately 6:15 p.m. (App. to Petition at p. 6a).

The demonstration was marked by numerous acts of trespass and violence against Blount employees and their property. The demonstrators also directed their violence toward approximately seventy-five (75) sworn peace officers of the Lakeland Police Department and the Polk County Sheriff's Department (App. to Petition at p. 6a). Blount employees were able to leave the site on the evening of October 26 only by being transported in covered panel trucks under police escort to a nearby employee

---

[1] Charles M. "Tony" Pinion, President of the International's Local 397, who was at the mass demonstration, estimated that six hundred (600) to seven hundred (700) persons were present at the mass demonstration, including four hundred (400) to five hundred (500) Ironworkers within Local 397's jurisdiction (App. to Petition at p. 6a).

parking lot. As the Blount employees jumped from the covered vans and ran to their automobiles, dozens of demonstrators attacked and injured both Blount employees and police. Only the presence of a human line of police in the parking lot prevented additional serious injuries (App. to Petition at pp. 6a-7a). During the afternoon of October 26, Lakeland police arrested at least four (4) demonstrators for offenses as varied as rioting, aggravated battery, resisting arrest and violence and trespass. All four (4) of these individuals pled guilty and were fined or imprisoned, or both (App. to Petition at p. 7a).

Blount instituted this action on October 27, 1979 seeking relief for tortious and wrongful acts by numerous defendants, including the International, arising out of the mass demonstration at the power plant site on October 26 (App. to Petition at p. 8a). In its Complaint, Blount stated that the International's actions constituted tortious and wrongful interference with the business relationship that Blount enjoyed with the City of Lakeland, Florida and certain of Blount's subcontractors (App. to Petition at pp. 2a-3a).

Prior to trial, Blount settled its dispute, by Consent Judgment, with all defendants except the International. In the Consent Judgment, Local 397 and the various individual Defendants admitted:

> . . . the conduct of the Individual Defendants and of the agents, representatives and members of Local 397 on October 26, 1979, was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the State of Florida. Furthermore, the Defendants party to this Consent

> Judgment *admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct* which occurred during the latter part of October, 1979, at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

(App. at p. 3-4) (emphasis added)

Throughout this litigation, Blount has sought to hold the International liable for the admitted tortious conduct of Local 397 on the basis of an agency relationship between the International and Local 397, *i.e. respondeat superior*. Prior to trial, the parties agreed to submit the agency issue to the trial court for a ruling. The parties agreed to the evidence which the court could consider:

> Specifically, the parties stipulated, for the purpose of the Court's consideration of the agency issue, to the admissibility of the affidavit of Juel Drake, the depositions of Chester Dennison, Billy Ray Connor and John Walsh, the constitution of the international, the By-Laws of Local 397, certain minutes of meetings of Local 397, and any other evidence which has been submitted by the parties on the International's Motion For Summary Judgment, provided, however, that the parties reserve their right to challenge the relevancy or materiality of such evidence or the weight it should be given by the Court.

(App. at p. 14).

After reviewing the evidence, the Florida trial court held on January 12, 1987 that the International was vicariously liable for Local 397's tortious conduct (App. to Petition at p. 23a). In reaching its decision, the trial court re-

lied upon the plain language of the International constitution and, separate and apart from the constitution, the following *eight* (8) additional factual findings:

1. The International's Southeastern Vice President, John Walsh, failed to make any effort to insure that Local 397 did not violate the Preliminary Injunction issued by the trial court (App. to Petition at p. 8a);

2. The International failed to bring charges against the individuals responsible for the tortious activities and mass demonstrations, such actions being in violation of the International constitution (App. to Petition at p. 8a);

3. The International failed to punish Local 397 for its actions, for example, by suspending or revoking Local 397's charter (App. to Petition at p. 8a);

4. The International failed, in any way, to communicate to its members or to the public that it disapproved of or objected to the unlawful activities (App. to Petition at p. 9a);

5. The deposition testimony of Billy Ray Connor, the general organizer for Defendant International, as well as Local 397's former business manager, which illustrated and acknowledged the subservient relationship of Local 397 to the International (App. to Petition at p. 12a);

6. The minutes of Local 397's business meetings which reflected constant discussions concerning the business, betterment and support of the International (App. to Petition at p. 13a);

7. Evidence that Local 397's members and officers participated in many diverse activities sponsored or participated in by the International, such as AFL-CIO, COPE

(Committee On Political Education), and District Council meetings (App. to Petition at p. 14a); and

8. Evidence that the By-Laws of Local 397 reflected the dominance and control of the International over its Local's affairs (App. to Petition at p. 14a).

The trial court found, based upon all the evidence presented, that the International dominated and controlled Local 397, and that such control was *actual* and not simply theoretical (App. to Petition at pp. 4a-5a). The trial court further found that the International and Local 397 *participated* in the unlawful mass demonstration (App. to Petition at p. 14a), and that although the International did not, by the evidence before the court, direct or in a formal way authorize the activities of the Local, the International *ratified or acquiesced* in the activity (App. to Petition at pp. 5a, 8a-9a). Therefore, the trial court found that Local 397 acted as agent of the International under Florida law (App. to Petition at pp. 15a, 18a).

On appeal to the Florida Second District Court of Appeals, the trial court's decision was affirmed (App. to Petition at p. 33a). The court of appeals found that the trial court's agency finding was based upon extensive findings of fact and conclusions of law supported by the evidence (App. to Petition at p. 25a). Subsequently, the court of appeals denied Petitioner's motion for rehearing and motion for rehearing *en banc* (App. to Petition at p. 34a).

The Florida Supreme Court then denied the International's Petition for Review (App. to Petition at p. 35a).

———o———

ARGUMENT

I. The International Simply Disagrees With The Factual Findings Of The Florida Courts

The International maintains, quite remarkably, that the Florida courts relied "solely" and "exclusively" upon the provisions of the International constitution in finding an agency relationship between the International and Local 397 (Petition at pp. 4-5). The International fails to note, however, the eight (8) other distinct factual bases upon which the trial court reached its decision (*see* discussion pp. 4-5, *supra*). Nor did the court of appeals rely "solely" and "exclusively" upon the International constitution in affirming the trial court. The court of appeals affirmed all aspects of the trial court's decision, thereby recognizing all factual bases from which the trial court held the International liable (App. to Petition at p. 25a).

The International's dispute, quite simply, is with the factual findings of the lower courts. Review of a lower court decision which turns solely upon an analysis of the particular facts involved is generally insufficient grounds for granting Certiorari. *Southern Power Co. v. North Carolina Pub. Service Co.*, 263 U.S. 508 (1924); *Houston Oil Co. of Texas v. Goodrich*, 245 U.S. 440 (1918). A court of law, such as this Court, is not a court for correction of errors in fact-finding and it should not undertake to review findings of fact by courts below in the absence of a very obvious and exceptional showing of error. *Goodman*

v. Lukens Steel Co., 107 S. Ct. 2617 (1987); *Graver Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271 (1949), *aff'd* 339 U.S. 605. No such error is present here. On that basis alone, the instant Petition should be denied. *Southern Power Co., supra; Houston Oil Co. of Texas, supra.*

II. The International Has Failed To Establish Any Legitimate Basis For Federal Preemption Of State Law Agency Principles

A. Preemption Is Not Warranted Because Florida Has A Deeply Rooted State Interest In Protecting Its Citizens From Violence

Blount's cause of action against the International is based upon tortious interference with a business relationship, a garden variety state law tort claim (App. to Petition at p. 2a). This Court has long recognized that state law governs tort claims even if labor activity is involved. *See Belknap, Inc. v. Hale*, 463 U.S. 491 (1983); *Farmer v. United Bhd. of Carpenters and Joiners*, 430 U.S. 290 (1977); *Linn v. Plant Guard Workers*, 383 U.S. 53 (1966); *Autoworkers v. Russell*, 356 U.S. 634 (1958); *Machinists v. Gonzales*, 356 U.S. 617 (1958); *Youngdahl v. Rainfair, Inc.*, 355 U.S. 131 (1957); *United Workers v. Laburnum Corp.*, 347 U.S. 656 (1954). The applicability of state law is particularly appropriate when the tort claim arises out of labor violence. *Farmer, supra,* (state law governs claim for intentional infliction of emotional distress); *Russell, su-*

pra (state law governs claims arising out of mass picketing and violence). As this Court observed in *Farmer*:

> [O]ur cases have consistently recognized the historic state interest in 'such traditionally local matters as public safety and order and the use of streets and highways. [Citations omitted] and . . . state court actions to address injuries caused by violence or threats of violence are consistent with the effect of administration of the federal scheme: such actions can be adjudicated without regard to the merit of the underlying labor controversy.'

430 U.S. at 299-300. Accordingly, Florida law has been correctly applied throughout this litigation.

The International argues that where a court undertakes to interpret and enforce an international union's constitution, preemption is required (Petition at p. 11). The courts below, however, did not interpret nor enforce the International's constitution in a dispute *between the International and its Local. See infra,* pp. 19-21. Rather, the Florida courts had before it a plain, everyday tort action between Blount and various union and individual defendants. To be sure, the trial court examined the International constitution in determining that the International was liable for Local 397's tortious conduct. But preemption is not appropriate merely because this state tort action touches the interrelationships among employees, employers, and unions. *Farmer*, 430 U.S. at 295-296.

1. The International Is Liable Under Florida Law Because It Dominated The Affairs Of The Local.

Under well-established Florida law, upon evidence of pervasive constitutional control, an international union

may have an agency relationship with an affiliated local sufficient to impute liability to the international for the tortious conduct of its local and affiliated officers and members. *International Union of Operating Engineers, Local 6675 v. Lassiter,* 295 So. 2d 634 (Fla. Dist. Ct. App. 1974), *quashed on other grounds,* 314 So. 2d 761 (Fla. 1975), *rev'd and remanded on other grounds,* 325 So. 2d 408 (Fla. Dist. Ct. App. 1975), *quashed and judgment entered by trial court reinstated,* 349 So. 2d 622 (Fla. 1977). The instant case, quite simply, is on all fours with *Lassiter.*

Here, the provisions of the International's constitution establish that the International completely dominates the affairs of Local 397 in those matters which count: organizing, negotiating, the terms of work agreements, strikes and pickets (App. to Petition at pp. 9a-13a). This weighed heavily in the trial court's determination that Local 397 acted as an agent of the International. *Lassiter,* 295 So. 2d at 638. The International's constitution also provides explicit constitutional instructions concerning negotiations and work agreement proposals and terms (App. to Petition at p. 10a). The International's participation in these areas is both extremely broad and mandatory. The record evidence establishes that the International exercises pervasive constitutional control over its subordinate Local and actually controls and dominates the affairs of the Local (App. to Petition at pp. 4a-5a, 9a-13a).

The Florida courts' finding of liability in this case is consistent with other Florida authority holding that the total domination of a subordinate entity by a superordinate entity is critical in determining agency, and hence liability

upon the superordinate entity. *Folwell v. Bernard,* 477 So. 2d 1060 (Fla. Dist. Ct. App. 1985); *Church of Scientology v. Blackman,* 446 So. 2d 190 (Fla. Dist. Ct. App. 1984); *Fernandez v. Valle,* 364 So. 2d 835 (Fla. Dist. Ct. App. 1978); *Sapp v. City of Tallahassee,* 348 So. 2d 363 (Fla. Dist. Ct. App. 1977). The International claims that *Folwell* somehow limits the rule set out in *Lassiter.* This argument has been repeatedly rejected in this case.[2] In short, the Florida courts followed established Florida precedent in holding the International liable for the conduct of its Local.

2. The International Is Liable Under Florida Law Because It Ratified Or Acquiesced In The Tortious Conduct Of Its Local

Under Florida law, a labor organization or its membership may also be held liable for the common law torts of its officers and members committed during the course of a lawful strike, or other primary labor activities, if the union officers or members authorized, participated in, or ratified the tortious act. *International Union of Operating Engineers v. Long,* 362 So. 2d 987, 989 (Fla. Dist. Ct. App. 1978), *cert. denied,* 372 So. 2d 469 (Fla. 1979). Whenever a principal is sought to be held liable on the ground of ratification, either express or implied, it must be shown that the principal ratified upon full knowledge of all material facts, *or that he was willfully ignorant or*

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[2] The Florida court of appeals stated "We conclude that *Lassiter* is still the controlling law in Florida on the question of agency relationships of parent or international unions and their subordinate local unions . . ." (App. to Petition at p. 27a).

purposefully refrained from seeking information, or that he intended to adopt the unauthorized act at all events, under whatever circumstances. *Bach v. Florida State Board of Dentistry,* 378 So. 2d 34 (Fla. Dist. App. 1979), *citing Oxford Lakeline v. First National Bank,* 40 Fla. 349, 24 So. 480 (1898) (emphasis added).

The Florida courts determined from the evidence that the International ratified or acquiesced in the tortious conduct of its Local and its members (App. to Petition at pp. 22a-23a). Accordingly, the International was held liable for the tortious conduct of its Local under well-established Florida law.

B. This Action Does Not Implicate Section 301 Of The Labor Management Relations Act, 29 U.S.C. § 185.

1. The Florida Courts Did Not Resolve A Dispute Within The Meaning Of Section 301

The International argues that this action is preempted by Section 301 of the Labor-Management Relations Act, 29 U.S.C. § 185 (Petition at p. 2). But this is not a dispute involving violation of a contract within the meaning of Section 301. Rather, this is a state tort claim for intentional interference with a business relationship. The International's agent (Local 397) has conceded liability on that score (App. to Petition at pp. 3a-4a).

Indeed, the instant dispute falls outside the express provisions of Section 301. Section 301(a) concerns disputes involving violation of contracts "*between* any employer and a labor organization . . . or *between* any such

labor organizations . . .'' (emphasis added). Where, as here, the resolution of the state law claim does not require construing a collective bargaining agreement, preemption is not mandated. *See Lingle v. Norge Div. of Magic Chef,* 108 S. Ct. 1877 (1988); *Caterpiller Inc. v. Williams,* 107 S.Ct. 2425 (1987); *Allis-Chalmers Corp. v. Lueck,* 471 U.S. 202 (1985).

Relying upon *Lingle,* the International suggests this Court simply substitute the words ''International constitution'' for ''collective bargaining agreement'' to reach the result the International desires (Petition at p. 11). The International fails, however, to consider the different policies present where a dispute involves interpretation of a collective bargaining agreement rather than a garden variety tort action.

Where breach of a collective bargaining agreement is involved, a court examines questions relating to what the parties to a labor agreement agreed and what legal consequences were intended to flow from breaches of that agreement. Such issues must be resolved by reference to uniform federal law, whether such questions arise in the context of a suit for breach of contract or a suit alleging liability in tort. *Allis-Chalmers,* 471 U.S. at 211. This protects from impairment the federal scheme established to order and adjust competing interests between the employer and employee through a process of free and voluntary collective bargaining. *Local 174 v. Lucas Flour,* 369 U.S. 95 (1962). Any other result would elevate form over substance and allow parties to evade the requirements of Section 301 by relabeling their contract claims

as claims for tortious breach of contract. *Allis-Chalmers,* 471 U.S. at 211. Furthermore, as this Court has noted:

> . . . not every dispute concerning employment, or tangentially involving a provision or a collective bargaining agreement, is preempted by § 301 or other provisions of federal law . . . Such a rule of law would delegate to unions and unionized employers the power to exempt themselves from whatever state labor standards they disfavor . . . In extending the preemptive effect of § 301 beyond suits for breach of contract, it would be inconsistent with congressional intent under that Section to preempt state rules that proscribe conduct, or establish rights and obligations, independent of a labor contract.

Allis-Chalmers, 471 U.S. at 211-212.

Examination of the International constitution, in the present context, is far removed from the main thrust of the federal labor laws. Ancillary consideration of the International constitution in a dispute between the employer and union does not present the potential obstacles to industrial peace inherent where interpretation of a collective bargaining agreement is undertaken. Therefore, this state law tort action does not implicate Section 301 policies.

As made clear in *Allis Chalmers,* Section 301 is concerned with parties to a collective bargaining agreement. The present action is not a dispute between the contracting parties, the International and Local Union. Therefore, no interpretation of the International Union's Con-

stitutional provisions within the meaning of *Allis-Chalmers* and its progeny is involved. Application of state tort law and corresponding state law agency principles in the instant case, will not interfere with federal labor principles.[3] The present case not only involves violent conduct within the province of state regulation, it falls outside of the scope of Section 301's express term.

2. Application Of Florida Law Will Further The Congressional Purpose Of Holding Unions Accountable For Their Tortious Actions

Even if the International constitution is a contract within the meaning of Section 301, *Journeymen v. Local 334*, 452 U.S. 613 (1981), preemption is not warranted. Congress' purpose in including union constitutions within Section 301 was to make unions accountable for agreements which they entered into among themselves, an objective that would stabilize labor organizations, 452 U.S. at 623-624. Such a policy interest is not implicated here; rather, the appropriate policy interest is that of protecting Florida citizens from violence. This is precisely the deeply rooted state interest this Court spoke of in *Farmer*

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[3] It should be emphasized, as the Florida courts noted, that the trial court's holding in this matter is based on narrow grounds. The events of 1979 and 1980 were punctuated by violence and intimidation. The presence of these elements has traditionally invoked the state's jurisdiction because of the state's deeply rooted interest in eliminating such conduct. Thus, the Florida courts followed the agency standard generally applicable in Florida and rejected the assertion by the International that because it is a labor union, the proof of agency must be a higher, more stringent standard than under Florida common law (App. to Petition at p. 29a).

and which requires application of Florida agency principles in the case *sub judice*.

The International argues that application of state law principles is inimical to national labor policy. To the contrary, this is a garden variety state tort law action in which the International must be judged by the same standards as other persons or entities, thus fulfilling the Congressional purpose described above. The self-interest of the International should not outweigh the deeply rooted state interests of Florida in protecting its citizens from violence. Such a result is consistent with prior decisions of this Court since it preserves the deeply rooted interests of a state in protecting its citizens where, as here, the tortious conduct is marked by violence. Absolving the International of liability in this matter would simply encourage further episodes of threats and violence such as that which occurred on October 26, 1979 and the months thereafter.

C. Federal Agency Principles Are Inapplicable To This Common Law Tort Action

The International places great emphasis on *Carbon Fuel Co. v. Mine Workers*, 444 U.S. 212 (1979). In *Carbon Fuel*, this Court considered whether an International Union would be vicariously liable in an action pursuant to a Section 301 action arising out of an unauthorized or wildcat strike. In that context, this Court held that the International was not liable because it did not authorize, participate in or ratify the tortious conduct of the particular Local. *Carbon Fuel*, 444 U.S. at 216.

The agency standard in *Carbon Fuel* should not be followed in this case. First, Florida maintains a deeply rooted interest in applying state remedies for violent conduct, regardless of whether it arises in a labor setting. Accordingly, Florida agency standards should be applied to the relationship between the International and its Local. Second, *Carbon Fuel* involved an action under a federal statute for contract damages in a wildcat strike setting. While *Carbon Fuel* might be relevant in such a setting, *see Dade County Police Benevolent Assn. v. City of Homestead,* 444 So. 2d 465 (Fla. Dist. Ct. App. 1984), it is inappropriate for disposition of this garden-variety tort action marked by violence and involving no federal claims. *Allis-Chalmers,* 471 U.S. 202.

Congress' intent in codifying the common-law doctrine of *respondeat superior* was not to preempt application of state agency principles and thus insulate the International from liability for acts of its agent involving the commission of violent conduct not within the purview of Section 301. Such a conclusion is consistent with this Court's reasoning in *Farmer* and its progeny acknowledging a state's interest in applying state law to tort actions independent of collective bargaining agreements.

The International places great significance on the sixth circuit court's opinion in *Shimman v. Frank,* 625 F.2d 80 (6th Cir. 1980). There, a dissident union member brought suit, under Section 101 of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 411 (1965), against a local and international union and various union members for a beating he suffered as a result

of his dissident activities. Applying the *Carbon Fuel* standard to the evidence, the circuit court found that the International was not liable for the tortious conduct of its Local. *Shimman,* 625 F.2d at 97.

Shimman is not controlling here. *Shimman* involved an action based upon federal labor law, and not a state tort action independent of a collective bargaining agreement seeking redress for damages caused by tortious conduct marked by violence.[4] The Court in *Shimman* also analyzed a constitution separate and distinct from that of the Ironworkers.

Finally, *Shimman* involved an internal union political squabble which led to the beating of a dissident local member for a fellow member. The court declined to impose liability on the International under such circumstances. In the instant case, the underlying tortious conduct emanated from labor union violence arising out of union organizational efforts. Thus, the source of liability in this matter is quite different from *Shimman.* The instant case provides a much more compelling set of circumstances for imposition of liability upon the International.

The other cases cited by Petitioner concerning interpretation of an international union's constitution and re-

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[4] Petitioner also cites *Hamilton v. International Bridge, Structural and Ironworkers Union,* 122 L.R.R.M. (BNA) 3309 (W.D. Ky. 1986) in support of its position. *Hamilton* is distinguishable in that it involved claims under 29 U.S.C. § 158 (unfair labor practices) and 29 U.S.C. § 422(5) (bill of rights of labor organization).

sulting issue of liability are irrelevant.[5] Each involves federal claims; the case at hand involves no federal claim.

D. Federal Interests Need Not Be Accommodated Where The Tortious Conduct Falls Outside The Core Purposes Of Section 301

This Court has recognized that in certain instances accommodation of state and federal interests is necessary. Matters not directly implicating express provisions of federal labor laws may require an accommodation of the federal interest in uniform regulation of labor relations with the traditional concern and responsibility of the state.

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[5] *Berger v. Iron Workers Reinforced Rodmen Local 201*, 843 F.2d 1395 (D.C. Cir. 1988) (Title VII and § 1981 actions); *Hammons v. Adams*, 783 F.2d 597 (5th Cir. 1986) (breach of duty of fair representation); *NLRB v. Local Union No. 46, Metallic Lathers*, 727 F.2d 234 (2d Cir. 1984) (unfair labor practice claims); *Abreen Corp. v. Laborer's Int'l. Union*, 709 F.2d 748 (1st Cir. 1983) (action under Section 303 of the Labor-Management Relations Act); *Fristoe v. Reynolds Metals Co.*, 615 F.2d 1209 (9th Cir. 1980) (allegations of breach of collective bargaining agreements and breach of duty of fair representation); *Kerry Coal Co. v. United Mine Workers*, 637 F.2d 957 (3d Cir. 1980), *cert. denied* 454 U.S. 823 (1981) (claim for violation of Labor-Management Relations Act, among others); *Sinyard v. Foot and Davies Div. of McCall Corp.*, 577 F.2d 943 (5th Cir. 1978) (violations of the Civil Rights Act, Equal Pay Act, and duty of fair representation); *Federal Prescription Serv. v. Amalgamated Meat Cutters*, 527 F.2d 269 (8th Cir. 1976) (Norris-LaGuardia Act); *Borowiec v. Local No. 1570 of Intern. Broth.*, 626 F. Supp. 296 (D. Mass. 1986) (claim for breach of duty of fair representation and also alleging wrongful deprivation of union members' right to speak freely, etc.); *York Div. Borg-Warner v. United Ass'n of Journeymen*, 473 F. Supp. 896 (S.D. Fla. 1979) (suit by employer seeking injunction prohibiting alleged work stoppage in violation of no strike clause); *Fabian v. Freight Drivers and Helpers Local No. 557*, 448 F. Supp. 835 (D. Md. 1978) (alleged breach of collective bargaining agreement, among others).

See Linn v. United Plant Guard Workers, Local 114, 383 U.S. 53 (1966); *Old Dominion Branch No. 496 Nat. Assn. of Letter Carriers v. Austin,* 418 U.S. 264 (1924). The International again argues that where a court interprets an international union's constitution, accommodation of the state and federal interests is required (Petition at p. 10). In support of its position, the International cites *Linn* and *Old Dominion.*

Linn and *Old Dominion* are not controlling in this case. Those cases involved state law tort actions for defamation. *Linn,* 383 U.S. at 64-65, *Old Dominion,* 418 U.S. at 273. As this Court recognized in *Linn,* such state regulation weighs heavily upon core purposes of the federal labor laws. *Linn,* 383 U.S. at 64-65. Labor disputes are often heated affairs frequently characterized by bitter and extreme charges, accusations and distortions. *Id.* at 58. Labor and management often speak bluntly and recklessly. *Id.* Therefore, due to the potential adverse effect state regulation could have on this central core relationship in the context of a labor dispute, accommodation of federal and state interests was required. *Id.* at 64-65. This Court also noted the specific statutory language contained in Section 8(c) of the Labor-Management Relations Act, 29 U.S.C. § 158(c), manifesting a congressional intent to encourage free debate in labor disputes. *Linn,* 383 U.S. at 62. No such concerns are present here. This is a garden variety state tort action for intentional interference with a business relationship.

Examination of provisions contained in the International's constitution will not affect the core purposes of the National Labor Relations Act. A state is not pre-

cluded from regulating all aspects of the employer-employee relationship. For example, state regulations imposing minimum labor standards have been found to be valid and unexceptional since they do not impermissibly intrude upon the collective bargaining process. *Fort Halifax Packing Co. v. Coyne,* 107 S. Ct. 2223 (1987). Similarly, actions against an employer by strike replacements for misrepresentation and breach of contract against an employer were not preempted under the Act. *See Belknap, Inc. v. Hale,* 463 U.S. 491 (1983).

As these cases demonstrate, the main thrust of the federal labor laws is aimed at ordering and adjusting competing interests through a process of free and voluntary collective bargaining. *Lucas Flour, supra.* State law which impermissibly intrudes upon this federal frame work aimed at peaceful resolution of disputes must give way to federal interests. *Allis-Chalmers, supra.* Where, as here, the state law tort action is independent of any agreement governing such a core relationship, it falls outside the main thrust of the federal scheme, and state regulation is proper. *Norge Div. of Magic Chef, supra.*

CONCLUSION

The Florida courts, applying Florida law, held the International liable for the torts of its agent Local 397 on two (2) separate and distinct bases: (1) The International's domination of the affairs of the Local (*see Lassiter, supra*); and (2) the International's officers and mem-

bers ratifying or acquiescing in the tortious activities of the Local (*see Long, supra*). These findings were supported by substantial evidence. The International's petition for a writ of certiorari is based simply on its disagreement with the factual findings of the courts below. The International has also failed to establish any legitimate basis for preemption of state law agency principles. Florida has a deeply rooted interest in protecting its citizens from violence. This interest must be preserved. Finally, application of Florida agency principles does not impermissibly intrude upon the core purposes of the federal labor laws.

For all the foregoing reasons, Blount respectfully requests that the Court deny the International's Petition for Writ of Certiorari.

Respectfully submitted,

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GARY R. KESSLER*
DAVID L. GORDON
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APPENDIX "A"

IN THE CIRCUIT COURT OF
POLK COUNTY, FLORIDA

BLOUNT INTERNATIONAL, LTD., et al.,	)	
Plaintiff,	)	
v.	)	CASE NO. GC-G-79-3322
INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, AFL-CIO, et al.,	)	
Defendants.	)	

CONSENT JUDGMENT AGAINST DEFENDANTS LOCAL 397 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL, AND ORNAMENTAL IRONWORKERS, CHARLES M. "TONY" PINION, STEPHEN DIXON, MICHAEL JOSEPH MCLOONE, LARRY DEAN LANIER AND BILLY RAY CONNER

On October 27, 1979, Plaintiff Blount International, Ltd. invoked the jurisdiction of the Court by seeking an Interlocutory and Preliminary Injunction pursuant to Rule 1.610 of the Florida Rules of Civil Procedure against Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO ("Local 397"), Charles M. "Tony" Pinion, Stephen Dixon, Michael Joseph McLoone, Larry Dean Lanier and Billy Ray Conner ("Defendants"). On November 2, 1979, that injunc-

tion was entered by the Court and it remains in effect at the present time (See Attachment A).

On November 11, 1980, Plaintiff filed an Amended Complaint which sought compensatory and punitive damages because of Defendants' "malicious and tortious illegal picketing and violent acts." Specifically, Plaintiff alleged that Defendant Local 397 condoned and ratified the tortious and illegal activity of their members, agents or representatives. Plaintiff's Amended Complaint also alleged that Defendants threatened, intimidated, coerced and harassed Plaintiff, its employees and agents and their families. It further alleged that Defendants inflicted and repeatedly threatened to inflict damage and injury to Plaintiff, its property, agents and employees. Defendants also allegedly interfered with Plaintiff's business relationship with the City of Lakeland, Florida, Plaintiff's subcontractors, and others, when Defendants condoned and ratified violence and intimidation during a labor protest outside the gates of Plaintiff's power plant construction project at the McIntosh Power Plant on Lake Parker Drive in Lakeland, Florida during the latter part of October 1979 and thereafter. The protest escalated into a riot by an estimated 400 to 450 protesters, a substantial number of whom were members, agents or representatives of Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO.

As a result of the violence and intimidation which occurred in the latter part of October 1979 and thereafter, Plaintiff was required to expend substantial effort, time and sums of money in order to protect the safety of its employees and their families and to protect Plaintiff's

property. Plaintiff's tort action seeks compensation for those expenses.

Since the inception of this action, the parties to this Consent Judgment have engaged in extensive discovery and motion practice. These parties now desire to resolve this action and all issues raised by the Amended Complaint, as it relates to them, without the time and expense of contested litigation. The parties hereto have therefore petitioned the Court to enter the following Consent Order and Judgment.

Now, therefore, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1.

The Court has jurisdiction of the subject matter of this action and of the parties hereto. The Amended Complaint states a claim upon which relief may be granted against the parties hereto under the laws of the state of Florida.

2.

Plaintiff in this action is Blount International, Ltd. The Defendants party to this Consent Judgment are Local 397 of International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO, Charles M. "Tony" Pinion, Stephen Dixon, Michael Joseph McLoone, Larry Dean Lanier and Billy Ray Conner.

3.

Defendants admit that the conduct of the individual Defendants and of the agents, representatives and mem-

bers of Local 397 on October 26, 1979 was threatening, intimidating, coercing and harassing of Plaintiff, its employees, agents and their families, and that said conduct violated the laws and dignity of the state of Florida. Furthermore, the Defendants party to this Consent Judgment admit that they interfered with the business relationship which Plaintiff had established with the City of Lakeland, Florida, and certain of Plaintiff's subcontractors, and that they engaged in the violent, threatening, and intimidating conduct which occurred during the latter part of October, 1979 at Plaintiff's power plant construction site on Lake Parker Drive in Lakeland, Florida.

4.

On November 2, 1979, an Interlocutory and Preliminary Injunction was entered by the Court for the purpose of controlling violent and intimidating conduct by the individual Defendants and by members, agents and representatives of Local 397 of the International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO which occurred at Plaintiff's power plant construction site at Lake Parker in Lakeland, Polk County, Florida in the latter part of October 1979, and thereafter.

5.

By virtue of this Consent Judgment, the terms and conditions of the Interlocutory and Preliminary Injunction entered by the Court on November 2, 1979 shall be, and hereby become permanent, perpetual, and binding upon all Defendants party to this Consent Judgment.

6.

The parties to this Consent Judgment expressly agree that the geographical scope of the within described Permanent Injunction shall include any project, activity or construction site by Plaintiff within Local 397's current or future jurisdiction. Any actions taken by the Defendants party to this Consent Judgment inconsistent with the terms and provisions of the Injunction, and this Consent Judgment, shall be considered by the Court as civil contempt.

7.

Upon a finding of contempt, the Court shall issue any and all reasonable orders, consistent with the Court's legal and equitable power, to control or restrain any such action which is inconsistent with or contrary to the terms of this Judgment.

8.

Upon a finding of contempt, the prevailing party shall be entitled to an award of any expenses incurred, including costs and attorney's fees, in seeking to enforce the terms of the Injunction as may be allowed by law.

9.

As a direct and proximate result of the aforesaid tortious conduct by the Defendants party to this Consent Judgment, said Defendants agree to pay Plaintiff the sum of $55,000.00 as full and complete compensation for its damages, expenses and attorney's fees as follows:

(a) Immediate payment by cashier's check or certified funds in the amount of $27,500.00 to Blount

International, Ltd. upon the approval and entry of this Consent Judgment by the Court; and

(b) Execution of a note by Local 397 in favor of Blount International, Ltd. in the amount of $27,500.00 payable in equal installments over a term of eighteen (18) months, with interest to be calculated at the prime rate plus 2% and secured by a lien on Local 397 real property. Monthly payments under said note shall commence June 1, 1986 and shall be due on or before the 10th of each month until said note is satisfied. Payments under the note shall be by cashier's check or certified funds and shall be sent by certified mail to the following address: Mr. Glenn O. Pruitt, Blount International, Ltd., P. O. Box 4577, Montgomery, Alabama 36116. Should Local 397 fail to make payments pursuant to the terms of said note, Blount International, Ltd. shall be entitled to immediate enforcement of its security interest in Local 397 real property.

10.

In consideration for these Defendants' agreement to abide by the terms of this Consent Judgment, Blount International, Ltd. agrees to consider this Consent Judgment as *res judicata* against these Defendants as to the matters alleged in its Amended Complaint and not to bring other proceedings against these Defendants based on their tortious conduct arising out of the events described in the Amended Complaint.

11.

The parties hereto agree to bear their own court costs incurred in this action.

ORDERED this 13th day of June, 1986.

/s/ E. Randolph Bentley
Tenth Judicial Circuit Judge

AGREED AND CONSENTED TO:

By: Gary R. Kessler
Blount International, Ltd.

By: C. W. Rutledge
For Local 397 of the
International Bridge,
Constructural and Ornamental
Ironworkers, AFL-CIO

By: Charles M. Tony Pinion
Charles M. "Tony" Pinion

By: Stephen Dixon
Stephen Dixon

By: Michael Joseph McLoone
Michael Joseph McLoone

By: Larry Dean Lanier
Larry Dean Lanier

By: Billy Ray Conner
Billy Ray Conner

Exhibit A

IN THE CIRCUIT COURT OF POLK COUNTY
STATE OF FLORIDA

BLOUNT INTERNATIONAL, LTD., Plaintiff, — v — GULF COAST DISTRICT COUNCIL OF CARPENTERS; INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL NO. 397; INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, LOCAL NO. 798; UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL NO. 2217; INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 925; CHARLES M. "TONY" PINION; CHESTER DENNISON; BILLY RAY CONNORS; CHESTER LUCAS; LAMAR GLEASON; KENNETH SMITH; KEVIN BOLINGER; STEPHEN HART; DAVID PEARSON; STEPHEN DIXON; MICHAEL JOSEPH McLOONE; LARRY LANIER; RUFUS NEAL HARRELL; BRUCE	CIVIL ACTION NO. GCG-79-3322 ORDER OF INJUNCTION

BEERY; AND NUMEROUS OTHER LABOR ORGANIZATIONS AND OTHER INDIVIDUALS WHOSE IDENTITIES ARE UNKNOWN,

Defendants.

ORDER FOR PRELIMINARY AND PERMANENT INJUNCTION

THIS CAUSE coming on to be heard upon Plaintiff's verified Complaint and upon its application for a Preliminary and Permanent Injunction, and upon argument by counsel for all parties, it appearing that injuries to persons and property have already occurred and that, therefore, Plaintiff is entitled to an Order for Preliminary and Permanent Injunction; and that the actions sought to be enjoined would be unlawful, per se, or in ultimate purpose and effect; it is therefore;

ORDERED AND ADJUDGED that:

1. The Defendants, each and every one, and through their agents and representatives, and all other persons acting at the direction of or in active concert or participation with them, jointly and severally, and all persons receiving notice of this Order for Preliminary and Permanent Injunction are hereby restrained and enjoined and ordered to refrain from:

A. Entering upon and/or trespassing upon the job site and premises of the McIntosh Unit Number Three Power Plant (hereinafter the "Job Site");

B. Engaging in mass picketing and assemblage at the Job Site, or from any manner whatsoever ob-

structing or interfering with free ingress and egress to and from the job Site;

C. Threatening, intimidating, coercing or harassing the Plaintiff, Plaintiff's employees and agents, and their families, photographing or otherwise copying the license plate numbers of Plaintiff, Plaintiff's employees and agents, and their families;

D. Photographing the Job Site or any individuals, equipment or vehicles physically present upon the Job Site;

E. Threatening, intimidating, or in any other way interfering with Plaintiff's employees' right to engage in their lawful vocation with Plaintiff;

F. Inflicting and/or threatening to inflict damage or injury to the person and/or property of the Plaintiff, its agents, employees and their families;

G. The making of any threats or the use of insulting, intimidating, opprobrious, or violent language against the Plaintiff, its officers, agents, employees, their families, or peace officers carrying out official duties, or the harassing of such persons or name calling, use of epithets, or similar conduct against such persons;

H. Establishing, permitting and/or maintaining more than —— ( ) pickets, at any one time, at either Gate One, Gate Two or Gate Five to the Job Site located at McIntosh Unit Number Three in Lakeland, Florida (Identified on Exhibit "A" attached): The foregoing restraint shall not apply when pickets are changing; however, Defendants and each of them are restrained from changing pickets or commencing pickets during the hours of 6:30 to 8:00 A.M., and 5:00 to 6:30 P.M. Said pickets, above described, shall not stop or stand at any time while at or within one hundred feet of an entrance to the Job Site, shall carry signs identifying their local and international union affiliation while engaging in the picketing permitted

by this Order and shall not otherwise interfere with ingress and egress of automobile, trucks or pedestrian traffic to or from the Job Site;

I. Congregating within and/or assembling within five hundred (500) yards of any said pickets at the above-referenced Job Site at any time;

J. Picketing the Job Site in any manner or massing at places in the vicinity of Job Site property other than at entrances described above;

K. In any manner whatsoever interfering with Plaintiff's employees' right to engage in their lawful vocation.

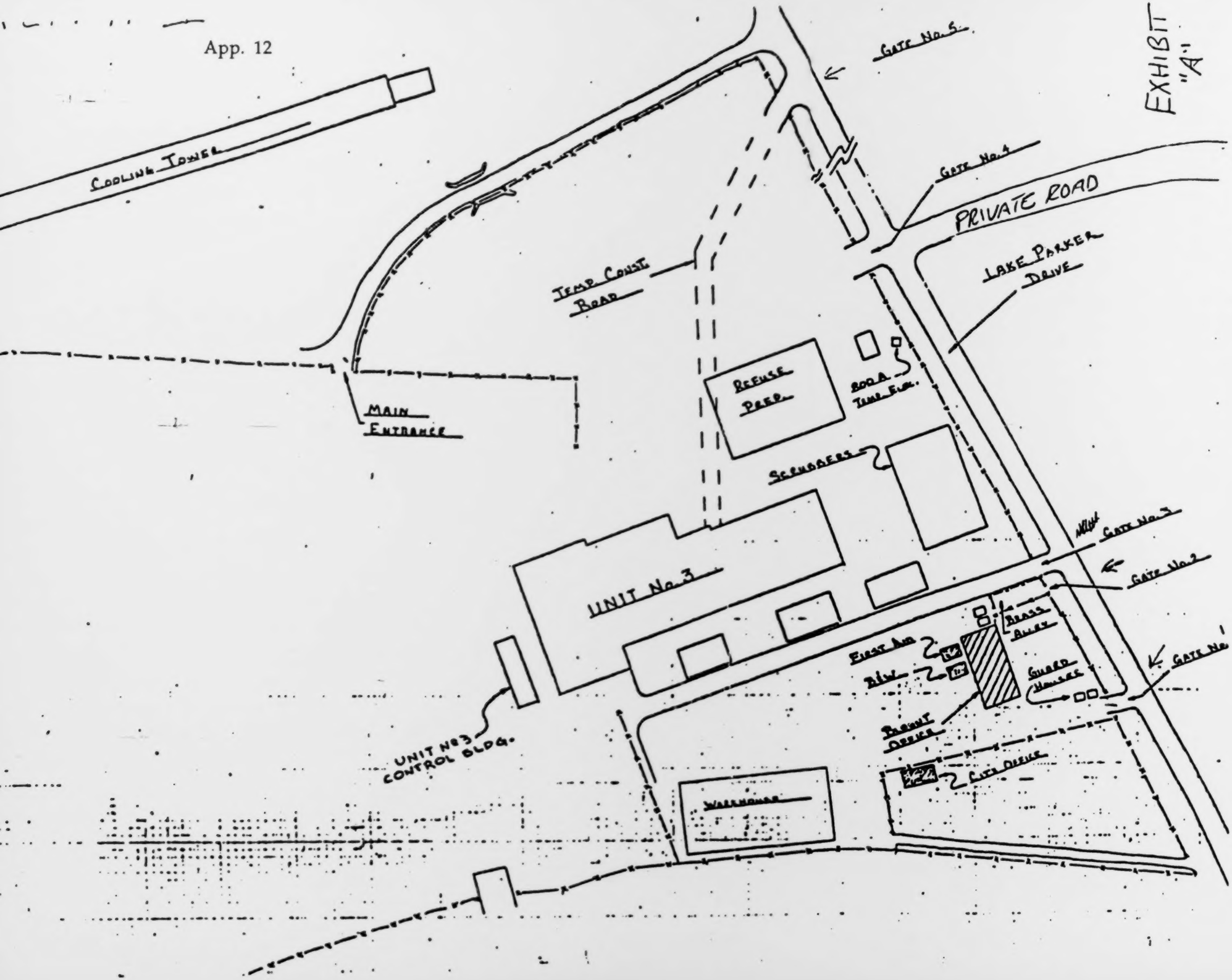
It is FURTHER ORDERED that Plaintiff, its agents, officers, security guard and supervisors shall upon entering and leaving the Job Site, drive at an appropriately reduced speed consistent with their duty to exercise due care to avoid injury to those persons engaged in peaceful picketing and shall not harass or intimidate the pickets.

ORDERED AND DECREED that the Sheriff of Polk County, Florida, together with all other local and state law enforcement agencies coming within the jurisdiction of this Court, are hereby commanded to enforce the terms of this Order and to take into custody any persons violating the terms of this Order and bring them before this Court for such action as this Court deems appropriate. The Defendants herein are directed to cooperate with law enforcement agencies and personnel.

ORDERED in Court this —— day of November, 1979, at ——o'clock —.m. to preserve the peace.

JUDGE
CIRCUIT COURT OF POLK COUNTY, FLORIDA

EXHIBIT "A"


COOLING TOWER
GATE No. 5
GATE No. 4
PRIVATE ROAD
LAKE PARKER DRIVE
TEMP CONST. ROAD
REFUSE PILE
200 A. TIME FOR.
MAIN ENTRANCE
SCRUBBERS
UNIT No. 3
GATE No. 3
GATE No. 2
GATE No. 1
BRASS ALLEY
FIRST AID
GUARD HOUSE
PARENT OFFICE
CITY OFFICE
WAREHOUSE
UNIT No. 3 CONTROL BLDG.

APPENDIX "B"

IN THE CIRCUIT COURT OF
POLK COUNTY, FLORIDA

BLOUNT INTERNATIONAL, LTD., et al., Plaintiff,	
v.	CASE NO. GC-G-79-3322
INTERNATIONAL ASSOCIATION OF BRIDGE, CONSTRUCTURAL AND ORNAMENTAL IRON-WORKERS, AFL-CIO, et al., Defendants.	

STIPULATION

The Plaintiff, Blount International, Ltd., and the remaining Defendant, International Association of Bridge, Constructural and Ornamental Ironworkers, AFL-CIO (International), hereby stipulate and agree as follows:

1. The Plaintiff, Blount International, Ltd., hereby withdraws its request for a jury trial as to the issue of the agency relationship between the Defendant International and the Defendant Local 397.

2. The Plaintiff and the International agree that the agency issue may be bifurcated from the remaining issues in the case for purposes of its disposition by the Court.

3. The Court may resolve the agency issue on the basis of the depositions and exhibits on file with the Court in accordance with the parties' respective submissions on the International's Motion For Summary Judgment. Specifically, the parties stipulated, for the purpose of the Court's consideration of the agency issue, to the admissibility of the affidavit of Juel Drake, the depositions of Chester Dennison, Billy Ray Conner and John Walsh, the Constitution of the International, the by-laws of Local 397, certain minutes of meetings of Local 397, and any other evidence which has been submitted by the parties on the International's Motion For Summary Judgment, provided, however, that the parties reserve their right to challenge the relevancy or materiality of such evidence or the weight it should be given by the Court.

4. The parties may submit briefs and proposed findings of fact and conclusions of law in support of their respective positions in accordance with the following schedule:

a. Plaintiff's initial brief to be served on or before June 10, 1986.

b. Defendant International's answer brief to be served within twenty-one (21) days after receipt of initial brief.

c. Plaintiff's reply brief to be served within fourteen (14) days after receipt of answer brief.

Following the receipt of briefs, proposed findings of fact and proposed conclusions of law, the court shall take the agency issue under submission and may set the matter for oral argument. Following its decision on the agency

question, the Court may schedule such further proceedings as may be appropriate.

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Gary R. Kessler
Attorney for Plaintiff
Blount International, Ltd.

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By: Mark F. Kelly,
Mark F. Kelly
Attorney for Defendant
International Association of
Bridge, Constructural and
Ornamental Ironworkers,
AFL-CIO

KELLY & MCKEE, P.A.
1724 E. Seventh Avenue
P. O. Box 75638
Tampa, Florida 33675-0638
(813) 248-6400

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing has been forwarded by First Class United States Mail to A. H. Lane, Esquire, LANE, TROHN, BERTRAND & WILLIAMS, P.O. Drawer J. Lakeland, FL 33802; and to David A. Rosenfeld, Esquire, VAN BOURG, WEINBERG, ROGER & ROSENFELD, 875 Battery Street, Third Floor, San Francisco, CA 94111, on this 20th day of May, 1986.

/s/ Mark F. Kelly
ATTORNEY

FILED
DEC 21 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-622 (3)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,
Petitioner,

v.

BLOUNT INTERNATIONAL, LTD.,
Respondent.

On Petition for a Writ of Certiorari to the District Court of Appeal, Second District State of Florida

---

PETITIONER'S REPLY BRIEF

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IN THE

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OCTOBER TERM, 1988

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INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, AFL-CIO,
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PETITIONER'S REPLY BRIEF

The Brief of Respondent in Opposition is a compelling demonstration of why the petition in this case should be granted.

1. Blount argues that "[u]nder well-established Florida law, upon evidence of pervasive constitutional control, an international union may have an agency relationship with an affiliated local sufficient to impute liability to the international for the tortious conduct of its local and affiliated officers and members." (Brief, p. 8-9.) This is precisely why the petition should be granted. For, as we demonstrated in our petition, this is contrary to Federal law which does not impose liability upon an international for the conduct of a local union merely because of affilia-

tion. Blount does not distinguish the federal cases but argues that they are "irrelevant" (See Brief at p. 18 and cases cited at n.5 of Respondent's Brief), an apparent concession that Federal law is contrary to that of Florida.

2. Blount compounds the problem in its response to our contention that the Ironworker International Constitution is an agreement within the meaning of 29 U.S.C. § 185. Blount points out that "the resolution of the state law claim does not require construing a collective bargaining agreement . . ." (Brief, p. 12.) That is, of course, true. What this state law claim does require is the interpretation of the International Constitution. Blount's failure to mention *United Association of Journeymen and Apprentices v. Local 334, United Association*, 452 U.S. 615 (1981) in which this Court held that union constitutions are contracts within the meaning of § 185 reveals how Blount fails to meet the necessity of uniform interpretation of union constitutions.

Blount's analysis leads to an absurd result. An International will have to tailor its constitution to respect different rules in the various states. Although the International may avoid liability in some states, it will have to have separate provisions to protect it from liability in Florida. Conversely, an international may be able to exercise control over local unions in some states but not others under this doctrine. Finally, the degree of control which an international can exercise will vary between State and Federal courts. This is surely contrary to the entire theory of Federal labor law jurisprudence which creates a uniform body of law to interpret collective bargaining agreements and international constitutions all of which are agreements under § 185.

3. Blount argues that Federal interests need not be accommodated in this kind of actions. (Brief, p. 18-20.) As we have pointed out, the Federal interest which needs to be accommodated is the uniform treatment of inter-

national constitutions. This is precisely the preemption teaching of such cases as *Old Dominion Branch No. 496, Letter Carriers* v. *Austin*, 418 U.S. 264 (1974) and *Farmer v. United Brotherhood of Carpenters and Joiners*, 430 U.S. 290 (1977) in which this Court held that a State law claim may proceed as long as the Federal rules with respect to labor issues are accommodated.

4. Blount eroneously argues that this is a factual case citing eight facts. Actually, these "facts" demonstrate how Florida has imposed its own view of the International constitution contrary to that of Federal law. Facts 1 through 4 and 8 as described by Blount deal solely with the structure of the relationship between the International and the Local Union. This relationship is extensively governed by Federal law. For example, an international cannot punish a local union although it can impose a trusteeship under the provisions of 29 U.S.C. §§ 462-464. Nor can an international punish local union officers without respecting the Landrum-Griffin requirements contained in 29 U.S.C. § 411.

Fact 6 claims that Local Union members discussed the affairs of the International union, a form of speech which was protected by Landrum-Griffin. 29 U.S.C. § 411 (a)(1). Finally, the fact that members of a Local Union participate in some of the same activities as the International says nothing about the International's involvement in this particular mass demonstration. Finally, in Fact 5 Blount refers to Billy Ray Conner as "the general organizer for Defendant International, as well as Local 397's former business manager . . ." but Conner did not become an International representative until several years after this incident and at the time that it occurred was an official of Local 397.

As we have illustrated these "facts" go to the ultimate question of whether one state can impose liability upon the International Union for the conduct of a Local Union because the State reads the constitution contrary to the

manner in which Federal law interprets that document. Moreover, these facts demonstrate the dramatic lack of any evidence showing the International's involvement in the mass demonstration which forms the basis of the State law claim.[1]

5. In this case where the Local Union has conceded that it was responsible for the mass demonstration, the International should not be held liable under any principle where it had no actual participation in that mass demonstration.[2] We think Blount's brief demonstrates in a convincing manner that this Court needs to grant the petition to make it clear that State law cannot overrule a consistent body of Federal law interpreting the constitution of various International unions in a uniform manner throughout the various states.

Respectfully submitted,

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* Counsel of Record

December, 1988

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[1] The Local Union has assumed full responsibility for the mass demonstration as Blount points out. See App. 1-7 to Blount's brief.

[2] Blount incorporates in its petition the "Order of Injunction" (App. pp. 8-11). The International union was not even named as a party to the lawsuit at that time and was not named as a defendant in that injunction. Indeed, the International did not become a party until an amended complaint was filed in November of 1980.